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(HANSARD)

Thursday, November 17, 2011

The Honourable NOËL A. KINSELLA
Speaker

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Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
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THE SENATE

Thursday, November 17, 2011

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

SENATORS' STATEMENTS

2011 GLOBAL HEALTH CONFERENCE

Hon. Roméo Antonius Dallaire: Honourable senators, from November 13 to 15, 2011, Montreal hosted a global health conference, which was put on by McGill University and international development agencies from both Canada and the United States.

One of the themes discussed showed that conflicts around the world are a source of concern for global health. The conference addressed some wide-ranging topics. For example, international conflicts that require the creation of refugee camps can lead to inhumane conditions and sources of diseases that can provoke pandemics.

[*English*]

Global pandemics that may arise through conflicts because of the international displaced camps and refugee camps in the world are a threat to countries like ours, as they are spread not only by the refugees who are permitted to enter but also by all those who work to try to protect them.

The second dimension of conflict and how it will affect global health is that such conflicts can perpetuate themselves because those big refugee camps and camps of internally displaced persons are a source of extremism and terrorism. Thus, there is a continuous cycle of creating problems through these camps. The camps are created due to conflicts and within those camps conflicts will continue to be regenerated because of extremism and terrorism.

Ultimately, this puts the global atmosphere — the global scenario for humanity — at risk because we are not resolving the conflicts. It is not that we do not have the tools to control some of the pandemics that exist around the world, such as HIV/AIDS, tuberculosis and so on, but we do not seem to want to use the proactive tools to stop the continued conflicts in imploding nations and failing states, which lead to mass atrocities and abuses that create a situation in which we guarantee a future pandemic and the risk to our countries because of conflicts in far-off lands. Therefore, it is in our self-interest to consider global health also in terms of security.

DIABETES MONTH

Hon. Judith Seidman: Honourable senators, I will take a moment to address a health problem that is as prevalent as it is damaging. November is Diabetes Month in Canada, and it is important to understand the impact diabetes mellitus has on our society.

Diabetes is a chronic disease, actually a group of metabolic diseases, that affects the pancreas. The result is that the body cannot produce enough insulin or that the cells do not respond to the insulin produced.

There are an estimated nine million people living with diabetes or pre-diabetes in Canada. Ten per cent of these live with type 1 diabetes, generally diagnosed in childhood or adolescence. Most of the other 90 per cent live with type 2 diabetes, diagnosed later in life and linked to a number of risk factors, including weight, family history and lifestyle. Type 2 diabetes can be minimized and managed through education programs that promote the benefits of healthy diet and exercise, for example. The prevalence of type 2 diabetes is so great, yet the solution to minimizing it may be rather simple.

Honourable senators, the Canadian Diabetes Association estimates that every year seven million people develop diabetes or pre-diabetes worldwide. If we do not focus on prevention, these numbers will continue to increase. Why? Because the population is aging, obesity is more prevalent and Canadian lifestyles are increasingly sedentary.

In 2030, an estimated 438 million people worldwide will have some form of diabetes, and 80 per cent of people with diabetes will die as a result of heart disease or stroke. Other complications may occur, including blindness, kidney failure and nerve damage. By 2020, diabetes will cost the health care system an estimated $16.9 billion annually.

Honourable senators, I ask you to take the time to recognize Diabetes Month. If someone you know lives with diabetes, please consider hosting a fundraising activity for the Canadian Diabetes Association. Founded in 1953 by Dr. Charles Best, a medical scientist and one of the co-discoverers of insulin, the Canadian Diabetes Association helps people with diabetes live healthy lives and supports research directed towards a cure. The association values volunteers and donations, and I am asking you to take the time to discover their new My Fundraiser program by visiting their website.

Find out how you can help by going to diabetes.ca, click on the My Fundraiser link and make a difference in the lives of so many Canadians living with this disease.

ORBIS FLYING EYE HOSPITAL

Hon. Vivienne Poy: Honourable senators, by now you will have received an invitation — and a reminder — to the ORBIS Flying Eye Hospital Canada Goodwill Tour Grand Reception, which will take place next Tuesday, November 22, at the Hilton Garden Inn at 2400 Alert Road.

Parliamentarians have all been invited to the VIP Grand Reception to tour the Flying Eye Hospital, a converted DC-10, with a state-of-the-art surgical and teaching facility. Guests will be bused to the hangar where the plane is stationed.

• (1340)

The ORBIS aircraft is fitted with a 48-seat classroom. Surgical procedures in the operating room are broadcast to the classroom and nearby hospitals. Large numbers of health professionals observe the surgeries and ask questions during the operations via a two-way audio-visual system.

ORBIS Flying Eye Hospital helps to restore sight to those who have gone blind in developing countries. Over 29 years, ORBIS has benefited people in 89 countries, helped train 88,000 doctors, over 200,000 nurses and many other health professionals, and 15 million patients have received treatment.

ORBIS reaches out to many people through education, training and capacity building. It has, over the years, transformed societies by giving developing countries the greatest possible assets, knowledge and expertise as well as the best hope for long-term sustainable solutions to avoidable blindness.

Globally, there are 39 million blind people. One person goes blind every five seconds. The tragedy is that, with proper treatment, most blindness is preventable.

What distinguishes ORBIS Canada from other charities is their focus on capacity building, through the training offered by the volunteer doctors and nurses at the Flying Eye Hospital. The operation costs are minimal, thanks to the dedication of its numerous medical volunteers and the support of sponsors who believe in ORBIS' vision.

I encourage all honourable senators to visit ORBIS Flying Eye Hospital on November 22 and to join me in recognizing ORBIS and its volunteers whose dedication and compassion are changing our world.

[*Translation*]

ADOPTION AWARENESS MONTH

Hon. Carolyn Stewart Olsen: Honourable senators, every year, thousands of Canadian families open their hearts and their homes to children in need.

[*English*]

The difference that adoption can make in the life of a child is profound. Whatever the problems that cause someone to give up a child, we always praise the kindness and openness of Canadian families that take in these children. Children worldwide are brought into generous Canadian homes daily and into the warmth and kindness of a Canadian family.

[*Translation*]

The month of November is adoption awareness month, and it is important for us to pay tribute to the families whose lives are enriched by adoption.

[*English*]

This act of extraordinary kindness and open-heartedness is something that I hope more Canadians will look toward. Right now, there are over 30,000 children in Canada waiting to be adopted.

Foster parents provide their homes as temporary refuge t children in troubled times and are an invaluable service fo children in need. This arrangement lacks the permanence of a adoption and is hard for both the children and the foster parent alike. We should remember all that foster parents do and tha they are often under-compensated and under-resourced.

What children need, however, is a forever home. They need t know that their families will stick by them, love them and kee them in their hearts forever. We all need a solid support networ in our lives, even as adults, and that is something that adoptio can provide.

Please join me, honourable senators, in recognizing the valuabl service that adoptive parents provide, not only to the childre they bring into their families but also to the community and th world.

[*Translation*]

No child should have to feel unwanted or unloved.

[*English*]

I encourage more Canadian families who feel they have room i their lives and in their hearts for another child to conside adoption as an option.

THE LATE HONOURABLE HAROLD HUSKILSON

Hon. Terry M. Mercer: Honourable senators, Nova Scotia ha lost one of its best known politicians, Harold Huskilson, wh passed away on October 24. Harold represented Shelburn County in the Nova Scotia legislature for 23 years, from 197 to 1993. In fact, he was succeeded in the seat by his own so Clifford, who served as MLA until 1999.

During his long career in politics, Harold served as Minister c Social Services and Minister of Information and Communication Before entering the legislature, Harold also served on the Shelburn Town Council and the Yarmouth Town Council.

Honourable senators, Harold studied at the Renaud School c Embalming in New York City and graduated in 1946. He starte working with his father in Lockeport at the family funeral hom and in the construction business. The Huskilson Funeral Home are still operating to this day in five locations aroun Southwestern Nova Scotia.

Harold was an avid baseball player, even playing for the Trur Bear Cats while stationed at Camp Debert with the 4th Arme Division during the Second World War. When he returned t Yarmouth, he played and co-managed the Yarmouth Gatewa and they who won three consecutive championships in a row. Th highlight came while playing for Yarmouth, when he hit fou home runs off the American pitcher in the playoffs and went on t win the game 4-1 and the championship.

Honourable senators, Harold was very dedicated to h community. A member of the Kinsmen Club and the Lockepo Legion, he was also a Mason, a Shriner and a member of th Royal Order of Scotland.

I had the pleasure of knowing Harold for quite a long time and worked with him when I was executive assistant to the Minister of Labour and Housing in Nova Scotia in the 1970s. He was a life-long member of the Nova Scotia Liberal Party and a strong advocate not only for Shelburne County but for all Nova Scotians.

As he was a funeral director, I used to tell Harold, "You are the last man to let the people of Shelburne County down." He always appreciated my bad humour.

I offer my condolences to Harold's two children, Elizabeth and Clifford; and to all members of the Huskilson family and extend my gratitude for his many years of service. He will be greatly missed.

AFRICAN-CANADIAN REMEMBRANCE CEREMONY

Hon. Don Meredith: Honourable senators, on November 10, 2011, I had the privilege of hosting a Remembrance Ceremony for African-Canadian veterans at Ryerson University along with Mr. Sheldon Levy, the university's president.

Let me start by saying that I have a great and high honour for all the men and women who serve in the Canadian Forces, but as the fourth African-Canadian appointed to this place, I feel compelled to use this opportunity to recognize these Black soldiers for their valuable contribution to this country while inspiring our youth to join the Canadian Forces and to make their contributions as well.

Together, we remembered the British Loyalists who came north of the border to fight alongside Canada in the War of 1812. We remembered the many African-Canadians and West Indians who fought in World War I and World War II, soldiers like Sergeant Milton Cato, who would go on to become the first Prime Minister of St. Vincent and the Grenadines. We also remembered the many African-Canadians who served in Korea and Afghanistan.

I wish to publicly thank Captain Brian Patterson, Warrant Officer Kevin Junor, Warrant Officer Wilbert Headley and the Honour Guard, Legion 258, for their participation in the ceremony. These veterans were deeply honoured to be remembered along with their fallen comrades, soldiers like Corporal Ainsworth Dyer, Private Mascoll Best, Private Mark Graham and Private Jeremiah Jones, just to mention a few.

Over 120 people were in attendance, including the High Commissioner of Lesotho, Her Excellency Mathabo Tsepa; the Consul General of Jamaica, His Excellency Seth George Ramocan; His Honour Justice Michael Tulloch; faculty and members of the media and the public.

With the ceremony streamed live over the Internet, we also had a number of people observing from their homes and their offices. It would be fitting to thank Mr. Sheldon Levy and his amazing team at Ryerson University, who exceeded our expectations and who played an integral role in making this event a reality, as well as His Honour Justice Michael Tulloch for being a key liaison between the university and my office.

Lastly, I would like to thank Ms. Kathy Grant, founder of the Legacy Voices Project, the only national project dedicated to the documentation and preservation of Black Canadian military history, for providing educational displays for the ceremony.

With the help of these people, this ceremony will become an annual event. It was a tremendous success. I have already received great feedback about how this event has impacted both individuals and the community. Key relationships within the community have been established and members are showing a renewed sense of energy and inspiration about the work that lies ahead.

• (1350)

People left the event educated about the significant contributions of our African-Canadian veterans. As I said during my address that night, it is my desire that this education continue beyond November 11.

It is crucial that our community and the government commit to educating Canadians and the world about the rich history of African Canadians and West Indians in the Canadian military.

Honourable senators, please join me in celebrating the past and present contributions of all the men and women of diverse backgrounds who have served with the Canadian Forces, promoting democracy in places like Libya and Afghanistan, and representing Canada proudly on the world stage.

THE NO STONE LEFT ALONE MEMORIAL FOUNDATION

Hon. Tommy Banks: Honourable senators, in May of this year, Senator Dickson and I had the great honour and privilege of attending in Holland during that country's celebration of the sixty-fifth anniversary of its liberation by Canadian and allied armies. During that visit, we attended ceremonies in several Canadian military cemeteries in Holland and learned of the great care that is given to the gravesites in those cemeteries by Dutch school students. It gave us a new understanding of the meaning of eternal gratitude. It seems odd to us that this tender care that is given to the graves of our men and women in far-flung foreign fields is not always the case when their graves are in military cemeteries here in Canada.

Fourteen years ago, a 10-year-old girl in Edmonton was visiting Edmonton's Beechmount Cemetery to place poppies on the graves of her grandparents, both of whom served in World War II. She wondered at the time why the graves of so many other soldiers were left bare and unattended. It bothered her every year, all those years, and then she and her family decided to do something about it. The results of the efforts of Keely Yates and her parents, Randall and Maureen Purvis, and their family is called the No Stone Left Alone Memorial Foundation.

This year, Edmonton students, joined by members of the Lord Strathcona's Horse (Royal Canadians), laid poppies on 3,700 military graves in the Beechmount Cemetery, and their plans are to expand and extend this movement to include other cemeteries in Edmonton and in other cities to ensure that in Canada, eventually, as it spreads, none of the graves of the 105,000 military buried in Canada are left alone and unattended on November 11.

I know that honourable senators will join in the gratitude and congratulations of the Senate of Canada to this movement, to its founders and to its participants.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw the attention of honourable senators to the presence in the gallery of Ms. Mehri Ghazanjani, a McGill University student who is participating in the Women in House Program. She is the guest of the Honourable Senator Fortin-Duplessis.

On behalf of all honourable senators, welcome to the Senate of Canada.

[*Translation*]

ROUTINE PROCEEDINGS

PRIVACY COMMISSIONER

PRIVACY ACT—2010-11 ANNUAL REPORT TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table, in both official languages, the Annual Report of the Office of the Privacy Commissioner of Canada for the 2010-11 fiscal year, pursuant to section 38 of the Privacy Act.

PRESIDENT OF THE TREASURY BOARD

2010-11 ANNUAL REPORT TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2010-11 annual report of the President of the Treasury Board on Canada's performance.

TREASURY BOARD

2010-11 DEPARTMENTAL PERFORMANCE REPORTS TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Departmental Performance Reports for 2010-11.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON THE PROGRESS IN IMPLEMENTING THE 2004 10-YEAR PLAN TO STRENGTHEN HEALTH CARE— SECOND REPORT OF COMMITTEE PRESENTED

Hon. Kelvin Kenneth Ogilvie, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, November 17, 201

The Standing Senate Committee on Social Affairs Science and Technology has the honour to present its

SECOND REPORT

Your committee, which was authorized by the Senate o Thursday, June 23, 2011, to examine and report on th progress in implementing the 2004 10-Year Plan to Strengthe Health Care, respectfully requests funds for the fiscal yea ending March 31, 2012, and requests, for the purpose of suc study, that it be empowered to engage the services of suc counsel, technical, clerical and other personnel as may b necessary.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senat Administrative Rules*, the budget submitted to the Standin Committee on Internal Economy, Budgets an Administration and the report thereon of that committe are appended to this report.

Respectfully submitted,

KELVIN K. OGILVIE
Chair

(*For text of budget, see today's* Journals of the Senate *Appendix A, p. 628.*)

The Hon. the Speaker: Honourable senators, when shall thi report be taken into consideration?

(On motion of Senator Ogilvie, report placed on the Orders o the Day for consideration at the next sitting of the Senate.)

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON ACCESSIBILITY OF POST-SECONDARY EDUCATION— THIRD REPORT OF COMMITTEE PRESENTED

Hon. Kelvin Kenneth Ogilvie, Chair of the Standing Senat Committee on Social Affairs, Science and Technology, presente the following report:

Thursday, November 17, 201

The Standing Senate Committee on Social Affairs Science and Technology has the honour to present its

THIRD REPORT

Your committee, which was authorized by the Senate o Tuesday, June 21, 2011, to examine and report on th accessibility of post-secondary education in Canada respectfully requests funds for the fiscal year endin March 31, 2012, and requests, for the purpose of suc study, that it be empowered to engage the services of suc counsel, technical, clerical and other personnel as may b necessary.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

KELVIN K. OGILVIE
Chair

(*For text of budget, see today's* Journals of the Senate, *Appendix B, p. 634.*)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Ogilvie, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

THIRD REPORT OF COMMITTEE TABLED

Hon. David Tkachuk: Honourable senators, I have the honour to table, in both official languages, the third report of the Standing Committee on Internal Economy, Budgets, and Administration, which deals with reports on international travel.

[*Translation*]

ADJOURNMENT

MOTION ADOPTED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, November 22, 2011, at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

[*English*]

Honourable senators, leave is being requested that I put the motion as to the adjournment motion. Leave was granted to raise this later, but I understand that the motion is to be put now.

It is moved by the Honourable Senator Carignan, seconded by the Honourable Senator Marshall, that with the permission of the Senate and notwithstanding rule 58(1)(h), that when the Senate adjourns today, it will stand adjourned until Tuesday, November 22, 2011, at 2 p.m.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY PRESCRIPTION PHARMACEUTICALS

Hon. Kelvin Kenneth Ogilvie: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Senate Standing Committee on Social Affairs, Science and Technology be authorized to examine and report on prescription pharmaceuticals in Canada, including but not limited to:

(*a*) the process to approve prescription pharmaceuticals with a particular focus on clinical trials;

(*b*) the post-approval monitoring of prescription pharmaceuticals;

(*c*) the off-label use of prescription pharmaceuticals; and

(*d*) the nature of unintended consequences in the use of prescription pharmaceuticals.

That the committee submit its final report no later than December 31, 2013, and that the committee retain until March 31, 2014, all powers necessary to publicize its findings.

• (1400)

[*Translation*]

THE SENATE

NOTICE OF MOTION TO DISAPPROVE OF THE ACTIONS OF JUDGE WILLIAM ADAMS OF THE TEXAS FAMILY COURT

Hon. Céline Hervieux-Payette: Honourable senators, pursuant to rule 57(2), I give notice that two days hence I will move:

That the Senate of Canada disagrees with the behaviour of Judge William Adams, who sits on the Family Court in the State of Texas, and was shown through social media to have used violence on his disabled daughter for so-called education; and

That the Senate of Canada recognizes that the use of violence by parents or guardians of a child, aimed their education, is unacceptable, ineffective and counter-productive and is detrimental to the social development and professional success of a child.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY SOCIAL INCLUSION AND COHESION AND TO REFER PAPERS AND EVIDENCE SINCE BEGINNING OF FIRST SESSION OF THIRTY-NINTH PARLIAMENT

Hon. Kelvin Kenneth Ogilvie: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report on social inclusion and cohesion in Canada;

That the study be national in scope, and include a focus on solutions, with an emphasis on collaborative strategies involving federal, provincial and municipal governments;

That the papers and evidence received and taken and work accomplished by the Committee on this subject since the beginning of the First Session of the Thirty-Ninth Parliament be referred to the Committee; and

That the Committee submit its final report no later than June 30, 2012, and that the Committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

QUESTION PERIOD

JUSTICE

CONSIDERATION OF NORTHERN AND ABORIGINAL PEOPLES IN DRAFTING OF CRIMINAL JUSTICE LEGISLATION

Hon. Nick G. Sibbeston: Honourable senators, yesterday I made a statement about the omnibus crime bill and how the bill may affect the Northwest Territories, where approximately 88 per cent of the present jail population is native people. I suspect that the situation is much the same in Nunavut and perhaps to a lesser extent in the Yukon.

The Minister of Justice in the Northwest Territories has recently expressed concern about the likely effect of the bill with regard to costs and overcrowding. There will be more people in jail for longer periods under the new crime bill.

In the North most people in jail are there not because they are criminals in the southern sense. Most of them are in jail because of social problems. It must be recognized that the Aboriginal people in the North come from a different, more ancestral way of life.

Over the last 50 years, they have come from a very historical life on the land to live in the towns and larger centres in the North. It is very socially difficult and disruptive for people going throug this change. Because of this, many native people end up in jail nc because, as I said, they are criminals, but because of soci problems.

Has the government, in drafting its crime bill, taken the peopl such as the Aboriginal people in the North, into consideratio recognizing that the bill will likely affect them in a very adver and harsh way?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, obviously the government received a ver strong mandate from the Canadian electorate, as it was part c our stated commitment, to pass our crime legislation withi 100 sitting days. The bill is presently making its way throug Parliament. When it makes its way to the Senate, and then t committee, there will be some opportunities to present concern and ask questions with regard to the specific measures in the bi and whether things were taken into consideration.

I do, though, want to state, honourable senators, that th Minister of Justice has been working very closely with hi provincial and territorial counterparts and he will continue to d so. The honourable senator quite properly and correctl mentioned the different social concerns and the differen makeup of a potential prison population in our North. I ar certain that there will be great sensitivity toward this. He i correct that it is a different dynamic altogether.

One of the things, though, that I believe that all ministers c justice, whether from the territories or the provinces, have state is that one of the many positive outcomes of the new crim legislation is the deterrent factor. Perhaps in our communities, a we work with our young people, the fact that they will have t consider the consequences of their actions may, in many case prevent the action from ever taking place.

Having said that, Senator Sibbeston always asks reasonabl questions on behalf of his constituents and he is to be applaude for that. I would urge him, when the bill comes to the Senate, nc only to speak up in the chamber here on second reading, but als to follow it through committee.

I will make the Minister of Justice aware of Senator Sibbeston' concerns in this regard.

PUBLIC SAFETY

INCARCERATION

Hon. Nick G. Sibbeston: Honourable senators, the correctiona system in the Northwest Territories uses what is called dynami supervision as a way of managing inmates. This allows staff t mingle with prisoners and identify and prevent problems befor they get out of hand.

This only works because northern jails are different fro southern jails. They are full, but for the moment they are nc bursting at the seams. If they are forced to handle more prisoner this system will change, making these institutions much mor dangerous for inmates and staff.

Some provinces have said they will reduce the number of cases they will prosecute. In the North, it is the federal government that controls who gets prosecuted and, therefore, how many new prisoners will be sent to jail.

Given the major role Canada has in determining how many northern inmates there will be, will the federal government ensure that northern territories will have sufficient resources to manage an increase in the number of prisoners? Further, will Canada provide the territories with increased capital and operating funds for their correctional system?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will take that question as notice and seek a more detailed answer. However, in terms of prison populations, I think there has been some hysterical misinformation floating around.

In many cases, the longer sentencing just means that the same person is in prison for a longer period of time. Under the existing system, there is quite strong evidence that it is not a new prisoner but the same prisoner returning. There is some misinformation floating around.

Again, honourable senators, I will send along Senator Sibbeston's question for a more definitive answer. There will be ample opportunity in this place to fully explore all of the questions that we have about the legislation. As it has been pointed out many times, the bill takes into its entirety many pieces of legislation that have been debated here for up to five or six years.

• (1410)

[*Translation*]

STATUS OF OMAR KHADR

Hon. Roméo Antonius Dallaire: Honourable senators, my question is for the Leader of the Government in the Senate. In 2000, Canada ratified the Convention on the Rights of the Child, including the Optional Protocol on Child Soldiers.

I wish to remind senators that Canada has yet to implement the necessary provisions of the convention. In other words, we ratified the convention, but we have not implemented it. We have not changed our security laws, our criminal laws or our immigration laws, which has allowed the government to let Omar Khadr rot in Guantanamo and, like Pontius Pilate, to wash its hands of its responsibilities to this child soldier.

I am raising this issue because the government clearly informed us that there was an agreement with the United States whereby, after one year — which was up in October — Omar Khadr would be returned to Canada to serve the rest of his sentence. He should not have been incarcerated, but that is another story.

Could the leader inform us of the details of the Canada-U.S. agreement for repatriating Omar Khadr?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, it is important to point out that Mr. Khadr pled guilty to very serious crimes, including the murder of an American medic.

Decisions with regard to the international transfer of offenders are made by the Minister of Public Safety, and, as at all times, we put the safety of Canadians first and foremost. The case with regard to Mr. Khadr will be dealt with in due course.

Senator Dallaire: I am not taking from the leader's answer the fact that our jails are not safe enough and that we are leaving him in Guantanamo Bay for that reason.

Apart from that point, the government did say publicly — and as we are often told, the government has been clear on this point — that it was arranging for the repatriation of that ex-child soldier for incarceration in Canada.

Can the leader give us the details of that plan? Why is he still in Guantanamo Bay and not here now after that year?

Senator LeBreton: Honourable senators, as Senator Dallaire well knows from many discussions we have had in this place, I do not share his view that Mr. Khadr is a child soldier. It would be very nice if the honourable senator would express the same amount of outrage and concern for the victims of Mr. Khadr that he does for Mr. Khadr.

Senator Dallaire: I am not asking for a moral lecture here, or what my priorities or efforts should be.

I am asking the leader, as part of the government in power for the last five years, what the government is specifically doing about that detainee who is being held — yes, in my opinion but an opinion also shared by the Supreme Court and so many others internationally — in an illegal jail while he is not brought back here. I am not debating whether he should stay in jail any more. We have gone through that. Why is he not here now? What were the arrangements?

Moreover, we read recently in the *National Post* — we cannot use *The Globe and Mail* here, but the *National Post* seems to be more acceptable — that Vic Toews, the Minister of Public Safety, has said he will need another 18 months of staffing before he can take a decision on bringing this ex-child soldier back.

What has he been doing for the last year? Can the leader give a specific response, irrespective of all the niceties around Omar Khadr, whether we like him or not, his family, his politics and so on? We have a specific case; a legal position has been taken, and we have a clear comment by the government saying it has made arrangements to repatriate him in one year. Why is he not back home?

Senator LeBreton: I am sure President Obama would be interested in the comment that Guantanamo is an illegal prison, but in any event, I doubt he follows the workings of the Canadian Senate.

Having said that, I answered the senator's question in my first response, when I said that the decisions regarding the international transfer of offenders, including Mr. Khadr, are made by the Minister of Public Safety. At all times, the Minister of Public Safety, as he must and as he does, considers the safety of Canadians first. This file will be dealt with by the Minister of Public Safety in due course.

[*Translation*]

Senator Dallaire: It is because I was speaking my second language. Perhaps I was not understood, despite the efforts of our fine interpreters. I am not jeopardizing or questioning the minister's job. I am asking the leader to provide, to us here in this chamber, the agreement between Canada and the United States to repatriate Omar Khadr one year after he pleaded guilty and was sentenced to serve eight years in prison. We are not revealing a state secret.

The leader told the opposition that he is a criminal. That is not a secret; it is public knowledge. What was decided? If the leader does not know, she could just say so and then make inquiries.

[*English*]

Senator LeBreton: I understood the honourable senator's previous question full well, just as I understood the last question, and the translators do an outstanding job. I think they are the best in the world in terms of simultaneous translation, not that I am a great judge because I am not strong in both official languages, as honourable senators know. However, I am told that they are.

The fact is, honourable senators, I am not, nor would I be, privy to documents or agreements between the United States and Canada. I can only say to you what I have already said. This file is in the hands of the Minister of Public Safety, and the Minister of Public Safety, in due course, will deal with this matter. Sometimes these documents are not available or accessible. However, when Minister Toews makes his decision, he will let us all know and give us the reasons for the decision.

[*Translation*]

PRIVY COUNCIL

OFFICIAL LANGUAGE QUALIFICATION OF APPOINTEES

Hon. Jean-Claude Rivest: Honourable senators, I would like to briefly come back to the issue of bilingualism and the reasons and justification that the government gave when appointing a unilingual judge to the Supreme Court and when appointing the Auditor General. The government claims that it made the decision based on the criterion of competence or, in other words, it appointed the people who were best qualified to do the job.

This week, the government appointed the RCMP commissioner. It found a career police officer from British Columbia who speaks both official languages.

How is it that the government can find perfectly bilingual police officers within the RCMP to hold leadership positions but it is incapable of finding a bilingual person within the field o accounting to be the Auditor General of Canada or in the cas of the Supreme Court, a bilingual lawyer who meets th competence criteria and requirements that the governmen claims to uphold?

[*English*]

Hon. Marjory LeBreton (Leader of the Government Honourable senators, we have had debates in both house about the Supreme Court. Quite clearly, and as the argumen has been made in the Senate in the previous Parliament whe there was a private member's bill before us, the Supreme Court o Canada does not fall under the Official Languages Act.

I fervently believe that the pool of potential Supreme Cou jurists would be significantly shrunk if that criterion were to b put in place, and honourable senators can check the record of th speech by my colleague Senator Carignan on that point. That not even getting into the question of the Civil Code of Québe versus what takes place in the rest of the country.

• (1420)

As I have said with regard to the Supreme Court, I would no want unilingual Canadians, be they francophone or anglophon who could contribute to Canada's highest court, eliminated fro the possibility of serving on the Supreme Court because the happen to be unilingual francophones or unilingual anglophone Again, with the makeup and structure of the Supreme Court an what their duties are, plus the very good translation servic lawyers tell me there is more difficulty appearing before the cour because of the two different legal systems in Canada, with one i Quebec and another in the rest of Canada.

With regard to the Auditor General, I have answered in th place before, honourable senators, and we have heard witnesse say that a headhunting firm was charged with finding a qualifie person. We have heard and read in the newspapers that the li was reduced to two or three candidates. One candidate, we hav subsequently learned, did withdraw. In this case, the Audito General was chosen. There were some bilingual candidates, but a the end of the day the position was awarded based on merit an the commitment by Mr. Ferguson. We saw the evidence that h qualified as a person who could easily learn a second language.

I was not paying much attention when Pierre Elliott Trudea was naming an Auditor General, but the fact that he named unilingual English Auditor General did not draw much attentio back a few years ago.

With regard to the new commissioner of the RCMP, there wa an extensive search. There is one little bit of misinformation i what the honourable senator said. He said that the ne commissioner was from British Columbia. In fact, he was bor and raised in Lachute, Quebec.

Hon. Claudette Tardif (Deputy Leader of the Opposition Honourable senators, I want to come back to a comment tha the leader made in response to Senator Rivest. The Supren Court of Canada is there to respond to matters of justice and no to respond to the aspirations of those who desire to be judges.

Does the leader agree that equality of access to justice is an important principle in Canada, where we have two official languages, and that both language groups should have the same standards of equality of access to justice?

Senator LeBreton: Honourable senators, Senator Tardif has misinterpreted my comments. I think it is very clear. We had extensive debates as a result of an NDP private member's bill, which she sponsored in this place in the last Parliament. We had extensive debates on both sides with very good arguments. As Senator Carignan said in his speech, the pool of potential nominees for the Supreme Court from the province of Quebec would be much diminished if one was to apply the bilingualism criteria above that individual's legal expertise.

As I have said to Senator Rivest, I would not want to see an individual, just hypothetically, from the province of Quebec who is a unilingual francophone and widely applauded as a strong jurist and a legal expert, denied the opportunity to sit on the Supreme Court of Canada simply based on the fact that that individual could not speak English; nor would I want to see it on the other side. As I believe Mr. Justice Major said in his testimony before the Senate committee, a person from another part of the country should not be denied the opportunity to use their expertise to serve on the Supreme Court of Canada. As my colleague Senator Comeau pointed out at the time, the Supreme Court of Canada does not fall under the Official Languages Act, which was something that Prime Minister Trudeau saw to for the obvious reasons of what the honourable senator is saying here today.

Senator Tardif: On a supplementary question, honourable senators, the statistics that the leader is quoting do not fit in with what the Barreau du Québec indicates. Some 23,000 members of the Barreau du Québec do not support the government's position. Can the leader explain, then, why she is indicating that this is being supported in Quebec when that is not the case with the professional association of the Barreau du Québec?

Senator LeBreton: First, honourable senators, far be it from me to get up and start to respond to every single lobby group that decides they do not agree with the government's position.

This matter was dealt with in the last Parliament, as far as I know. It is not before this Parliament. The law is very clear. The selection of Supreme Court judges went through a committee in the other place, supported by all parties. There were very laudatory comments by the honourable senator's own leader in the other place about the two new Supreme Court justices.

I will not and will never stand in this place as the Leader of the Government in the Senate to say what I think about one lobby group or one association over another, especially because it can be flipped over to the anglophone side and the Canadian Bar Association. I could give a five-hour speech about some of the things the Canadian Bar Association has said and with which I do not agree.

AGRICULTURE AND AGRI-FOOD

CANADIAN WHEAT BOARD

Hon. Francis William Mahovlich: Honourable senators, this year the Canadian Wheat Board is celebrating its seventy-sixth year in existence. This could very well represent three generations of hard-working Canadian wheat and barley farmers.

The Canadian Wheat Board's role is to represent the thousands of Western Canadian farmers in the selling of their wheat and barley to help to get a fair price for everyone. The collective bargaining power they have gives many farmers a much better price than they would be able to get if they were to sell it on an individual basis.

They are also able to market it on a much broader scale than a single farmer would be able to do on his own. The Canadian government, however, has decided to do away with the Canadian Wheat Board. Worse still, they have decided to get rid the Canadian Wheat Board in a very hostile way. Section 47.1 of the Canadian Wheat Board Act states that the producers of the grain must vote on any major changes that affect the Canadian Wheat Board. The government has so far refused. The farmers therefore took it upon themselves to hold a plebiscite on whether or not to get rid of the Canadian Wheat Board.

[*Translation*]

The results are clear: 51 per cent of barley farmers and 62 per cent of wheat farmers voted in favour of keeping the institution.

[*English*]

I have met with dozens of farmers on this matter here in Ottawa and my office has received hundreds of emails and faxes from across the country from people who do not feel this is the right thing for Canada.

Senator Di Nino and I graduated from St. Michael's College many years ago. They taught us the same thing that Senator Demers taught his students in the National Hockey League: If it ain't broke, don't fix it.

Some Hon. Senators: Hear, hear!

• (1430)

Senator Mahovlich: Since a clear majority of farmers want to keep the Canadian Wheat Board in place, why is it the Canadian government is so intent on going against their wishes by destroying it and doing so in such an uncooperative way?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, again, I have to point out that the premise of the questions on the honourable senator's side is incorrect. We are not getting rid of the Canadian Wheat Board. The Canadian Wheat Board will continue to operate. What we are doing is giving Western farmers marketing choice.

I would say that if you were to ask most of those Western farmers about the adage "if it ain't broken, don't fix it," the majority of them would say, "It is broken, please fix it."

Hon. Grant Mitchell: They might say that, but they would not have you use their money to fix it in a way that they do not want.

Honourable senators, believe it or not, adding insult to injury, the Conservatives are now going to expropriate more than $60 million of farmers' money — I guess that would be a tax by any other name — without their willingness and their agreement to, as the government says, transition to this new form of Canadian Wheat Board dual desk. No one knows what that actually is or how it will perform. However, everyone does know, or anyone who has thought about it, that the Canadian Wheat Board is going to die and that that money is going to be used for a single, sole purpose, and that is to dismantle the Canadian Wheat Board. If dismantling the Canadian Wheat Board is about giving farmers —

The Hon. the Speaker: Order! Order!

Honourable senators, I regret to advise that the time for Question Period has expired.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTIONS

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table the answer to the oral questions raised by Senator Cowan on September 27, October 6, October 25 and November 15 concerning a study prepared by Justice Canada on credit for pre-sentencing custody.

PUBLIC SAFETY

REPORTS ON CORRECTIONAL SYSTEM—
REPORTS OF GOVERNMENTAL DEPARTMENTS

JUSTICE

REPORTS ON COST IMPLICATIONS OF LEGISLATION

(Response to questions raised by Hon. James S. Cowan on September 27, October 6, October 25 and November 15, 2011)

A copy of the final report entitled *Credit for Pre-sentencing custody: Data from five Canadian courts* is provided in response to Senator Cowan's question raised in the Senate on September 27, 2011.

The attached report was undertaken in support of the Government's commitment to tackle crime and prior to the introduction of Bill C-25, the *Truth in Sentencing Act* on March 27, 2009.

In consultation with the Federal/Provincial/Territorial working group on sentencing, Justice Canada gathered data on the state of credit for pre-sentencing custody prior to the introduction of legislative reforms. The research was designed to provide empirical data on the use of pre-sentencing custody credits in determining the sentence to be imposed on an offender in Canada. The results from this study, which are based on data that was collected between June 2008 and November 2009, showed, among other findings, that: (a) the majority of offenders (86 percent) received a 2 to 1 credit fo time spent in pre-sentencing custody; and (b) in the majorit of all cases studied (94 percent), the courts did not provid reasons for the credit awarded. The preliminary result informed the development of the *Truth in Sentencing Ac* (S.C. 2009, c. 29).

Provincial and Territorial Ministers Responsible for Justic reached a consensus in 2006 that credit for pre-sentencin custody should be limited to a ratio of 1.5 to 1 in general, an to a ratio of 1 to 1 for those persons who are detained becaus of their criminal record or for having violated bail. Provincia and Territorial Ministers Responsible for Justice called agai for these changes in 2007 and 2008.

The *Criminal Code* now provides as a general rule tha individuals are given one day of credit for each day spent i custody prior to sentencing. Credit at a ratio of up to 1.5-to 1 is only permitted where circumstances justify it and court are required to explain these circumstances. Credit for tim served by offenders who have violated bail or been denie bail because of their criminal record are limited to a maximum 1-to-1 ratio, and no enhanced credit beyond 1-to 1 is permitted under any circumstances.

Provinces and Territories commissioned a report entitle *The Changing Face of Corrections*. The report was submitte to Federal/Provincial/Territorial Ministers in 2009. As th Provinces and Territories are responsible for this report, th decision to release remains theirs.

(*For text of report, see* Appendix, *p. 595.*)

ANSWER TO WRITTEN QUESTION TABLED

HUMAN RESOURCES—
CANADA STUDENT LOANS PROGRAM

Hon. Claude Carignan (Deputy Leader of the Government tabled the answer to Question No. 7 on the Order Paper—b Senator Callbeck.

[*English*]

ORDERS OF THE DAY

POINT OF ORDER

Hon. Grant Mitchell: Your Honour, I value your leadership i the Senate greatly. I think you manage the Senate very well, wit a very moderate but firm and capable hand. I am surprised however, that you would cut me off in the middle of a question I am not sure I have ever seen that happen before, although i may have. I wonder if you could give me some precedent for tha

The Hon. the Speaker: Honourable senators, I thank th honourable senator for raising his point of order. I know tha Question Period is a very special time and an important part o

the work of the chamber. The rules are explicit that the time set aside for Question Period is 30 minutes. It speaks for itself. The rules are clear. It is 30 minutes.

EEYOU MARINE REGION LAND CLAIMS AGREEMENT BILL

SECOND READING

Hon. Dennis Glen Patterson moved second reading of Bill C-22, An Act to give effect to the Agreement between the Crees of Eeyou Istchee and Her Majesty the Queen in right of Canada concerning the Eeyou Marine Region.

He said: Honourable senators, I am honoured to rise today and begin debate at second reading of Bill C-22, the Eeyou Marine Region Land Claims Agreement Bill. This bill has come to us quickly, as it was passed at all stages in the other place on November 4. As honourable senators are aware, this bill represents the final stage in the ratification of the Eeyou Marine Region Land Claims Agreement.

The Cree of Eeyou Istchee have occupied the land along the eastern shores of James Bay and southeastern Hudson Bay for centuries. In 1912, jurisdiction over the territory inhabited by the Cree was transferred to the province of Quebec. A condition of the transfer was that Aboriginal rights would be recognized and settled by the provincial government. This eventually led to the landmark James Bay and Northern Quebec Agreement in 1975, which settled land claims for the Cree as well as the Inuit of Northern Quebec. It included provisions that have become the model for many subsequent agreements, such as control over local government, health and school boards, measures for economic and community development, and a system for joint management of wildlife with Quebec and Canada. However, this agreement did not settle the Cree claim to a number of islands in the southeastern part of Hudson Bay and James Bay. The Cree have never been more than seasonal residents of these islands, but they have been hunting there and fishing in the waters around the islands for as long as 4,000 years, possibly even longer. This is the history that is recognized in the present Eeyou Marine Land Claims Agreement.

The Eeyou Marine Region is an area of approximately 61,000 square kilometres along the Quebec shore in James Bay and the southeastern part of Hudson Bay. The islands in this region have a total area of about 1,650 square kilometres. Under the Eeyou Marine Region Land Claims Agreement, the Cree will own, in fee simple, almost 1,050 square kilometres of land. They will own rights to the land and rights to subsurface resources.

This agreement reflects the shared heritage and traditional use of those islands. It also respects the overlap agreement reached by the Cree of Quebec and Nunavik Inuit earlier this decade. The overlap agreement created three zones along the eastern coast of Hudson and James Bay: a northern zone in which islands are owned by the Nunavik Inuit; a joint zone in which the Cree and Nunavik Inuit share equal rights of ownership over the islands; and a southern zone in which the islands are owned by the Cree.

In addition to ownership of the islands involved, and in keeping with traditional use of the area, the overlap agreement states that the Cree and the Nunavik Inuit share wildlife harvesting rights in all three zones. The overlap agreement is part of the Nunavik Inuit Land Claims Agreement, and it also forms part of the present agreement.

The bill I am speaking to today is very similar to the Nunavik Inuit Land Claims Agreement, which received Royal Assent in 2008. For example, like the Nunavik Inuit, the Cree will have the exclusive right to harvest any species of wildlife in the Eeyou Marine Region in the fulfillment of their economic, social and cultural needs. Restrictions would be imposed only for conservation of a species.

The marine waters and the seabed will remain under federal jurisdiction, but no development will be allowed to proceed in the area without consulting the Cree. Anyone, including the Government of Canada, who proposes a major project in the Eeyou Marine Region will have to negotiate an impact and benefits agreement with the Cree. The Cree will have the right to be compensated for any loss of property, income or harvested wildlife, present or future, caused by certain development activities in the Eeyou Marine Region.

Ensuring the Cree of Quebec have greater opportunities to participate in and benefit from economic development in the region is a key element of the agreement. The Cree will generally have priority for government employment opportunities in the area. Cree enterprises wishing to compete for certain government contracts for goods and services in the area will be provided with support and assistance in preparing their bids.

• (1440)

This agreement also includes a one-time payment of approximately $5.7 million for implementation of the coming into force of the agreement, and a capital transfer of some $67.5 million over the next 10 years. With these funds, the Cree will be in a better position to launch new ventures or to join in the ventures of others.

In addition to having a say in how any development takes place, this agreement also ensures the Cree of Quebec will benefit from any development in the Eeyou marine area. Specifically, they will receive 50 per cent of the first $2 million in resource royalties and 5 per cent annually of any additional resource royalty paid to governments.

Together with the surface and subsurface rights to their land, these provisions provide the Cree with another fundamental right — the right to exercise greater control over their own economic destiny. This is in keeping with the objectives of the Federal Framework for Aboriginal Economic Development.

These provisions of the agreement remove barriers to entrepreneurship. They create the opportunity to leverage investment and promote partnership with the private sector to generate sustainable economic growth. This is a point I would like to emphasize, honourable senators.

This agreement will create three co-management boards. These boards will have the authority to provide input with respect to environmental issues associated with any proposed development. Canada, Nunavut and the Cree will be represented on these boards.

The Eeyou Marine Region Planning Commission will manage land use planning in the area. The commission will establish policies for land use planning, develop and implement a land use plan, and assess and monitor development projects to ensure they conform to the land use plan.

As its name suggests, the Eeyou Marine Region Wildlife Board will be the primary instrument for wildlife management in the area. Research will be one of the board's key activities. A $5 million research fund provided by Canada will be managed by the board. The Cree Trappers' Association will be a key partner for the board in carrying out its mandate.

A third board, the Eeyou Marine Region Impact Review Board, will screen and review development projects and recommend whether and under what conditions projects would proceed.

I will emphasize, honourable senators, that one half of the membership of each of the boards will be named by the Cree of Quebec.

The rights set out in this agreement and the benefits that will flow from it belong to all Cree, those that live on the coast and those that live inland. All Cree enrolled as beneficiaries under the James Bay and Northern Quebec Agreement will be automatically enrolled as beneficiaries under this agreement.

It will not affect in any way the rights of the Cree as Aboriginal peoples. There is nothing in the agreement that restricts the Cree from accessing and benefiting from existing programs, including those under the James Bay and Northern Quebec Agreement, and the Cree-Naskapi (of Quebec) Act.

In fact, as I mentioned, this bill and the agreement it implements resolve an issue that has been outstanding since the James Bay and Northern Quebec Agreement was signed in 1975. It also settles litigation related to Cree ownership of this land.

Honourable senators, I am sure we will agree that this is a very significant agreement. It is significant in what it will achieve and it is significant in how it was achieved. This agreement is the result of good faith discussion between parties who met in an environment of mutual respect. In that regard, I wish to offer my congratulations to all those who helped to make the agreement a reality, including the Government of Nunavut.

Most importantly, I would like to recognize the contributions of Grand Chief Matthew Coon Come and his team. Without their collaboration, we would not be where we are today. I refer not only to their role as negotiators, but as leaders.

As honourable senators are aware, the terms of this agreement were submitted to the people of the Cree Nation in a referendum in 2010. Prior to the votes, the Grand Council of the Cree went to great lengths to ensure voters knew exactly what was at stake. Consultations and information sessions were held in Cree communities and in urban centres such as Montreal, North Bay, Sudbury and others, where there were significant numbers of Cree. In total, 16 sessions were held.

In the ratification process itself, more than 74 per cent o eligible voters in the Cree Nation participated. Of those who cas a ballot, more than 95 per cent supported the agreement resulting in about 70.5 per cent of total eligible voters voting i favour of the agreement.

Clearly, the people of the Cree Nation agree with Grand Chie Coon Come. He has described the impact of this agreement i terms that we can all understand and support:

> This Agreement assures the Cree people that they ca continue their traditional way of life on the islands of Jame Bay and eastern Hudson Bay and going into the future i provides the Cree Nation with the means to defend thei collective interests in case of future development.

In short, honourable senators, this agreement will brin certainty. For Aboriginal and non-Aboriginal people alik there will be clarity and certainty of both the ownership and us of the lands and marine resources in the area, a stabl environment for future development and investment.

Honourable senators, the provisions of the Eeyou Marin Region Land Claims Agreement follow the terms of the Nunavi Inuit agreement very closely. Like the Nunavik Inuit agreemen this agreement has broad support from the people whose lives an livelihoods will be most affected by its implementations.

Honourable senators, I look forward to your support fo Bill C-22.

Hon. Nick G. Sibbeston: Honourable senators, I am pleased t speak on Bill C-22, An Act to give effect to the Agreemer between the Crees of Eeyou Istchee and Her Majesty the Queen i right of Canada concerning the Eeyou Marine Region. It heartening to see that all the parties in the other place hav supported this bill, making it possible for quick passage, and I a sure it will similarly pass this house.

Modern land claims provide tremendous benefits to Aborigin people and to Canada. I speak from experience in that in th Northwest Territories there have been four major claims settle and there are a number still in negotiations. Through these lan claims, the lives of people that are affected become better; peop become happier and are able to partake in Canadian society in more effective and profound way.

One of the benefits of establishing land claim agreements is tha there is greater clarity and certainty, thus allowing for econom development to proceed for the benefit of all Canadians.

Though success does not happen overnight, settling a clai provides a basis for success to be achieved. One need only look the Inuvialuit in the Beaufort Delta and the Cree in Norther Quebec. They were the first to settle their claims and are now bo economic powerhouses, not just in their regions but acro Canada.

I can speak from experience of knowing the Inuvialuit situatio up in the Beaufort area, where in 1984 they settled their claim. A the time, they received $56 million to $60 million that they cou use for economic development. Through wise investment ar

business, they have converted that money into over $1 billion, and they are one of Canada's 500 Fortune companies. They have done very well and they have used their money wisely. People have control over development that occurs in their area, and their lives have generally improved because of the land claims.

However, land claims are not simply about land and money; they are about enhancing the ability of Aboriginal people to govern their own lives. They create management institutions and give communities the capability and confidence to use them. They provide a bridge between traditional ways and the modern world, so they can, in the words of Tlicho leader Chief Jimmy Bruneau, "be strong like two people."

The Eeyou Marine Regional Land Claim covers 61,000 square kilometres off the eastern shore of Quebec and James Bay and in the southern Hudson Bay. I appreciate that Senator Patterson has stated the main provisions of the agreement, but I will repeat some of them so honourable senators can recognize the significance of the claim.

• (1450)

The waters in the claim area contain many islands. Of the 1,650 square kilometres, 150 square kilometres will be owned exclusively by the Crees of Eeyou Istchee, and another 400 square kilometres will be owned jointly by the Nunavik Inuit. Canada will retain ownership of the remaining islands, the marine waters and the seabed. The Cree will also participate in co-management boards respecting wildlife and will have exclusive harvesting rights in the area specifically for some species.

A capital transfer of $67.5 million will occur over 10 years. There is also a one-time payment of $5.7 million when the agreement comes into effect. The Cree will also receive a share of resource royalties from the extraction of natural resources in the Eeyou Marine Region. It is significant that this agreement addresses outstanding issues from the first modern land claim agreement, James Bay and Northern Quebec, which was made in Canada. This should remind us that the land claims process is not static; it creates an ongoing government-to-government relationship between Canada and claimant groups.

Canada has sometimes struggled with the implementation process of land claim agreements. It is interesting that Aboriginal people enter into these agreements in good faith and with a lot of hope. Unfortunately, over the years, the federal government has not come through with all of the provisions and commitments they made, but that is being worked on. All Aboriginal groups that have land claims have come together for meetings, and they have appeared before Senate committees to deal with some of their problems.

I hope this awareness of and publicity about the problems of implementation will be solved and will not be a problem in future years. What good are land claims if the federal government does not come through with all of the provisions that it promises? The matter of implementation has been pointed out by the Auditor General and by the Standing Senate Committee on Aboriginal Peoples. This has resulted in a number of lawsuits, some of which are ongoing. Bill C-22 contains provisions for a review within 10 years with respect to performance and implementation. Obviously, the parties have recognized that implementation is an issue and that they must focus on it and be sure that all of the provisions in the claim come to pass in an appropriate way.

When I talk about this, I refer not only to this government but also to past governments. This is a non-partisan issue. The current government has told us that they intend to change the implementation process so that it respects the spirit and intent of modern treaties, not just the letter of the law. I do not think they are quite there yet, but we, as honourable senators, must always be vigilant to ensure that they get there eventually.

Despite these words of caution, I wholeheartedly encourage the adoption of this bill and urge all honourable senators to do the same.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

(On motion of Senator Patterson, bill referred to the Standing Senate Committee on Aboriginal Peoples.)

BOARDS OF DIRECTORS MODERNIZATION BILL

SECOND READING—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Cowan, for the second reading of Bill S-203, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards.

Hon. Linda Frum: Honourable senators, I welcome the opportunity to address Bill S-203, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards.

When moving Bill S-203 at second reading, the sponsor of the bill, Senator Hervieux-Payette, declared that for reasons she does not know to this day, an earlier version of this bill, Bill S-206, was rejected by the Standing Senate Committee on Banking, Trade and Commerce during the last Parliament. As one of the critics of Bill S-206, I am happy to have this chance to reiterate the reasons I did not support that bill as well as the reasons I urge honourable senators today not to support the repackaged Bill S-203.

We are told that Bill S-203 owes much of its inspiration to legislation that has been enacted in a few European nations. However, honourable senators, I would suggest that before we look towards Europe for guidance on how to improve our national and fiscal management, we first remember this: Canada has the strongest job growth record in the G7; the World Economic Forum, for the fourth consecutive year, ranked Canada's banks as the soundest in the world; *Forbes* ranked Canada as the best place in the world for business to grow and create jobs; the International Monetary Fund and the Organisation for Economic Co-operation and Development forecasted that Canada's economy will be among the strongest in the G7 this year and next; Fitch Ratings, Moody's and Standard and Poor's all give Canada an AAA credit rating; and Bank of Canada Governor Mark Carney has been selected to head the Financial Stability Board, an international agency dedicated to building a more resilient and efficient global financial system. This is a clear reflection of Canada's superior performance in monetary, fiscal and financial sector policy areas.

The guiding principle behind Canada's corporate governance laws are that they should promote the fair and efficient functioning of the market place. A successful corporate governance framework is one that allows a Canadian economy to be productive and competitive. What corporate governance laws should not do is interfere with the primary responsibility of a corporate board, which is to increase shareholder wealth. The best corporate governance laws are those that are flexible enough to allow investors, directors and shareholders to manage corporate performance in the best interest of their companies, as is their duty and also their right. Canada's corporate governance legislation must allow corporate boards to chart their own course in adapting to market conditions and maintaining competitiveness in fragile economic times.

The bill before honourable senators touches on the complex issue of board composition, which is an integral component of good corporate governance. This bill proposes mandating gender quotas for corporate boards and changing the process for electing directors. The bill would require boards of directors to have at least 40 per cent of either gender by the close of the sixth annual meeting of shareholders after the bill's coming into force. Should a company be unable to meet this requirement, the bill would compel the government to deny it the official documentation required for it to conduct its business.

Senator Hervieux-Payette argues that the two main advantages of the implementation of Bill S-203 are: First, it would elevate the status of women in Canada's financial institutions; and second, it would provide full voting rights to shareholders.

Let us begin with the first point. The balanced representation of women and men in our corporate culture is undeniably desirable. However, achieving this goal and achieving it through mandated quotas are not one and the same. The implementation of a mandated quota could make a candidate's gender and not his or her qualifications the most essential criterion in selecting that individual as a board member. The premise that a diverse executive is beneficial for business is irrefutable. However, if there is a mandated number of each gender allowed to serve on a board, it is easily imaginable that a qualified candidate may not be implementable because of his or her gender.

• (1500)

As Nilofer Merchant, a female executive, writes in th September 2011 edition of the *Harvard Business Review*:

> Quotas won't encourage meritocratic selection, or eve increase the pipeline of qualified candidates, but merel propagate a gender-oriented approach that is guaranteed t provoke a backlash. All of this is doing a disservice to th higher-level goal: better performance. . . .
>
> . . . We need to have experienced people of all types including women, serving boards effectively. There is n shortage of important problems that companies and ou economies face that will benefit from a fresh point of view Imposing quotas will quickly provide the appearance o change, but will in fact delay real change. In order for thei ideas be heard, valued and therefore acted upon, wome must be truly welcomed by the board's selection process, no forced upon it. This may mean that changing the makeup o boards takes longer. But it will result in real change faster

I would also cite the findings of the Institute for Governance o Private and Public Organizations, a non-profit think tan associated with Concordia University's John Molson School o Business which, in 2009, asked a working group to come up wit recommendations of how to reasonably and effectively increas the number of women serving on the boards of directors o Canadian publicly traded companies.

The working group came to the conclusion that femal participation in governance would be an asset to business however, it concluded that this should not be achieved throug a quota system, noting:

> . . . the key reason the Working Group prefers *incentive* over *coercion* reflects an abiding commitment to boar quality. Ability and skill remain the most important criteri for any board member. Gender targets should in no wa take precedence over competence of board candidate Under no circumstances should there be doubt that woman director has been appointed strictly for her gende rather than for her individual qualifications.

Honourable senators, this brings us to the unavoidable an obvious problem with quotas, and that is, they end up hurtin exactly the people they attempt to help. When the reason for woman's election to a board can be called into question — Is sh there on merit or is she there to fulfil a quota? — she has bee stigmatized and her qualifications have been delegitimized.

If the negative impact of the legitimacy of female corporat participation is one reason not to support this bill, another is th negative impact on shareholders' rights. The Honourable Senato Hervieux-Payette herself concedes that the "shareholder's role paramount" in good corporate governance, and legal experts wi tell you that ". . . the right to vote is the most fundamental righ accorded to shareholders under Canadian corporate la statutes."

Through voting, shareholders can control the makeup of th board of directors, which is by statute responsible for th management of the corporation, and thus participate in majo

business decisions affecting the company. Bill S-203 purports to expand this legal right, but it very clearly limits it substantially with a rigid preset composition framework.

The Honourable Senator Hervieux-Payette suggests that under her bill shareholders would have "full" control when voting for and deciding on board members. She makes no attempt, however, to reconcile the fallacy of "full control" with a legally mandated prescribed quota based on gender. Full control that has to comply with a stringently applied pre-set percentage is "full" in no sense of the word.

Imagine this scenario under Bill S-203: The shareholders of a corporation want to vote for a woman director, however, the male composition of the board only amounts to 39 per cent. In such a case, the shareholders would be prohibited from exercising their preference for the woman director. That is not full voting rights; nor is it what I call women's rights.

Honourable senators, there are more reasons why we should be wary of Bill S-203. The proposed gender quotas in Bill S-203 would also apply to certain provincial and foreign corporations. These proposals are inherently unworkable. Imposing gender diversity legislation on provincially incorporated companies is beyond the authority of this Parliament. Insofar as the bill applies to foreign corporations, its measures would simply be impossible to enforce.

The bill also overlooks the broader question of what goes into sound corporate decision making in Canada. Canadian businesses take into account a variety of factors in determining the makeup of boards — the diversity of perspectives, certainly — but also the needs of their business, domestic and international markets, professional qualifications and industry knowledge. Gender is one important component of corporate governance, but it is not the only one — and corporations should not be tied down by a one-size-fits-all quota system.

Finally, this bill does not consider the important and growing role of business voluntarism in addressing the issue of greater female representation on corporate boards. As Senator Hervieux-Payette argues — and no one has ever disagreed with — greater participation by talented women in Canada's financial institutions would be hugely beneficial to Canada and to the world. We should not imagine that this fact is lost on those who inhabit corporate Canada. A report on women on boards issued by the Canadian law firm of Fasken Martineau noted in 2011:

> More than 90 per cent of boards of S&P 500 companies now include some female participation. The gender imbalance is starting to correct itself. And the pressure is mounting . . . to hasten the change.

Ultimately, though, the responsibility for achieving diversity on corporate boards lies, most appropriately, with the private sector and the private sector has recognized this. It is encouraging to note that due to recent appointments women now make up one third of all directors on the boards of Canada's large banks.

The Royal Bank of Canada and the Toronto Dominion Bank are each only two board appointments away from Senator Hervieux-Payette's desired 40 per cent representation. The other three major banks are only three appointments away.

As another example of corporate voluntarism, Canadian Pacific Railways has in recent years implemented programs to help women develop their careers, obtain greater work experience opportunities, and participate in job shadowing. Similarly, TD Bank Financial Group has established programs, mentoring and networking opportunities to develop women's leadership within the corporation.

Senator Hervieux-Payette's pessimistic observation that it will take generations before women see equality around the board table does not reflect the reality of how far corporate voluntarism has already brought us. Between 1994 and 2008, new appointments of female directors to Canadian corporations increased by 425 per cent. Based on growing female participation in corporate management, as well as the disproportionate representation of women in almost every area of higher education, there is every reason to believe that the surge in female directorships will continue.

In addition, the Government of Canada has initiatives to support the greater participation of women throughout economic life in Canada. As part of the government's broad efforts towards this goal, Status of Women Canada has implemented pilot projects, such as financial support for the Canadian Board Diversity Council, aimed specifically at promoting corporate board diversity practices and equipping qualified women with the tools they need to pursue placements on corporate boards.

Canada's corporations and financial institutions are well run, innovative, world-class organizations. Enforcing the mandatory measures contained in this bill could have negative effects on long-term corporate strategy and competitiveness and should be approached with extreme caution. Canada's corporate governance framework laws should remain flexible to ensure that Canada continues to encourage investment and growth to the benefit of all Canadians.

For these reasons, honourable senators, I ask you not to support Bill S-203.

Hon. Céline Hervieux-Payette: Honourable senators, I have a few questions. My first question relates to what the senator mentioned at the last minute — long-term negative effects.

I would like to know where this example comes from and if she could provide some examples for Norway, France, Spain and for countries that already have that measure in place, especially Norway, because it is quite an extensive period and it is quite the opposite that happened. In England right now it is a voluntary measure until next year, and we are talking about the city where a lot of the economic activities are taking place. The minister said if this is not done he will impose it with a law.

• (1510)

I want to know the long-term effect. I would like to know where the honourable senator saw it and which study mentions it.

Senator Frum: Honourable senators, there is a study from the University of Michigan on the effects in Norway, which stated that when you rush appointments and do it by quota, you end up appointing people who are not qualified to serve on boards; their primary qualification becomes gender. I can refer the honourable senator to the University of Michigan study on this.

Senator Hervieux-Payette: I thank the honourable senator, but I already have that study, and it is the only one that says that. There is no way that our own academic community would recognize that. We have the evidence that was given before committee. The one who adopted the bill came and testified to the contrary. It is always assuming that every male appointee was competent. I am not going to talk about this.

The honourable senator is talking about shareholders and shareholders' rights all along. She probably knows about our corporate law in this country and that most of the votes of the shareholders are now being delegated to pension funds that are aggregating all the funds that people contribute. At the end of the day, if I work for the Canadian government or for any Crown corporation or for any private company, there is a pension fund that is administered, and they are the ones that are casting their votes.

Does the senator not recognize that those who contribute can be equally women and also that women represent 80 per cent of the consumers in this country? These people have no voice in the companies that are producing these goods, and they have no voice on the future of their pension funds — pension funds that the honourable senator's committee and mine have studied. We are worried about where it is going because the return on investment now is not good at all.

Give me an example of how the shareholders will be affected negatively if we have competent women on boards. The honourable senator makes an equation between women's appointments and qualifications.

Give me also a second answer: Why would they be incompetent compared to the men who are there? Do we not have enough competent women in this country to sit on boards?

Senator Frum: I thank the senator for the questions.

To the first point, if the goal of this bill is to enhance shareholder rights or greater shareholder participation, I do not understand where or how this bill would achieve that. I do not think that addresses the honourable senator's own issue.

On the second point about whether there are enough competent women to fill board roles, I am not the one who proposes limiting the representation on boards to 60 per cent. The honourable senator is the one who is proposing limiting women's participation.

Senator Hervieux-Payette: Actually, I would like to make some comments and ask a question. When the honourable senator mentioned the good actions of our banks, I recognize that. In fac at the TD Bank the person in charge is a woman. I understan they are going in the right direction.

Senator Frum talks about an increase of 400 per cent. Whe you go from one to four, it is 400 per cent. Do not play game with figures. We know that we went from 10 per cent a few year ago to 14 per cent recently. That is 2 per cent in almost 10 years At that speed, we will not have any meaningful representation c women on boards.

I would also like the senator to correct the allegation in he speech that it is to elevate the status of women, and so on. Th first meaning of my bill is to have increased competition an to have a better economic performance in our country. We ar falling behind year and year. If we bring in more new blood, mor educated people and people with different qualification maybe we will go forward rather than staying where we ar and sometimes falling behind.

Senator Frum: First, as I mentioned at the outset, Canada' economic performance at this moment is really very impressive I do not know, again, that we need to start playing around wit the way we have our corporate management.

Also, in terms of saying that I am manipulating numbers, that i why I mentioned that both the Royal Bank and the TD Bank ar only two appointments away. These boards are not very large. I they are only two appointments away from reaching 40 per cen I do not think the situation is quite at the crisis level that th honourable senator is describing it to be.

Senator Hervieux-Payette: The senator talks about Fortun 500. I am talking about the publicly traded companies in th country. We are talking about thousands of companies. I am nc talking about 500. We have statistics for the 500. That is a fac Today, however, 40 per cent of our companies have zero wome on their boards. How will you get these people to come on boar with the volunteers of our banks where you and I are putting ou money? How will we convince the 40 per cent to have significant number of women on their boards so that they ca make some progress?

Senator Frum: As the honourable senator said in her speec about this bill, women are increasingly involved in the economy women do make the majority of household decisions. Women' role in the market and in this society is growing. It is inevitabl that they will start to participate in these other boards.

As Senator Hervieux-Payette correctly pointed out, it is to ever board's advantage to have female participation. Those boarc that choose not to have that kind of diversity do so at their peri it is their own problem.

Senator Hervieux-Payette: Is the senator willing to say that if w do not achieve that within two years, she is willing to support m bill? I will still be here.

Senator Frum: No, senator, I am not in favour of quotas an I never will be.

Hon. Michael A. Meighen: Honourable senators, will the Honourable Senator Frum accept a question? I say at the outset that I, too, am leery about quotas, as you are, but I share the view that it is good business to have more women in positions of authority, particularly on the boards, which is what we are discussing.

That being said, I read the financial press every day and I noticed that the new president of IBM worldwide is a woman. I have also noted in previous weeks and months that many women have been featured when they have arrived at senior executive levels.

In preparing for your remarks, did you come across any statistics that could indicate what I perceive to be a very strong trend towards more women in senior positions?

Senator Frum: I thank the senator for that question. Yes, it is absolutely true that there are increasingly greater numbers of women in management positions. I do not have exact statistics at my fingertips, but it is an undeniable fact of our modern society and modern life.

It is important to note, for example, that in the major banks, to be qualified for a board position, it is desirable to have CEO experience. As more and more women gain that kind of experience, as they are in the example just given, then more and more will become qualified for these positions. It is an organic process that is taking place as we speak.

Hon. Yonah Martin: I want to express my support for the position that Senator Frum has stated regarding how sometimes legislation in support of women can have the opposite effect or an adverse effect. As the honourable senator pointed out, it can delegitimize women.

I have an example of something that is not directly related, but it is about such a law in Quebec, for instance. A former employee of mine lived there. When she was married, she wanted to keep her name. However, the legislation required her to keep her maiden name. Rather than going through the whole paperwork, she did something very straightforward: She moved back into the Ottawa region.

Would you talk a bit about how sometimes what we think we are doing could have that adverse effect?

Senator Frum: I thank the senator for the question. I do not have to think any further than our own chamber. I think I can speak on behalf of all the women here who would like to believe that we are here for our qualifications and not for our gender. I can think about it so personally. In any other circumstance, including corporate Canada, it is demeaning to a woman when you start allowing the possibility of her qualifications to come into question.

(Debate suspended.)

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding and continuing on debate, I would like to draw to your attention the presence in the gallery of the Honourable Craig Leonard, Minister of Energy and Minister responsible for the Energy Efficiency and Conservation Agency of New Brunswick.

• (1520)

On behalf of all honourable senators, minister, welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

BOARDS OF DIRECTORS MODERNIZATION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Cowan, for the second reading of Bill S-203, An Act to modernize the composition of the boards of directors of certain corporations, financial institutions and parent Crown corporations, and in particular to ensure the balanced representation of women and men on those boards.

Hon. Nancy Ruth: Honourable senators, I want to thank my dear and honourable friend for her good speech, and particularly for her great comments about Canada. There is no question we are doing well, but, you know, this is Canada and we can always do better. I rise to support the bill.

Women make up more than half of the Canadian population. They contribute greatly to our society and workforce. Over the last century and more, women have fought to be recognized as equals and to have access to the same opportunities as men. That is not quotas; that is about opportunity. Yet, in 2011, they still remain largely absent from positions of power and decision making. It is my view that addressing the absence of women in senior roles is a question of efficiency, profit and justice.

There exist precedents for this kind of affirmative action. In Canada, by 1983, the federal government had implemented affirmative action for Aboriginal persons, persons with disabilities, and women across all departments. Please, honourable senators, remember that affirmative action is not quotas, and quotas are not necessarily affirmative action.

By 1985, section 15(2) of the Canadian Charter of Rights and Freedoms made clear that positive programs designed to remedy discrimination were constitutionally valid. By 1986, the federal government passed the first Employment Equity Act, which was expanded in 1995.

We have heard that a number of countries have taken steps to address the lack of proportional representation of women in executive positions and on boards. In 2003, Norway became the first country in the world to pass a law requiring all public companies to achieve gender balance on corporate boards.

As honourable senators know, the law requires that each gender must make up at least 40 per cent of the representatives on the company boards. The Norwegian law has catalyzed similar proposals in many other European countries. In Spain, a 2007 law introducing gender parity for electoral office also requires

gender parity on corporate boards and state-owned and regulated companies. In France, the recently passed Zimmermann-Copé law requires the balanced representation of women and men on the corporate boards of directors of all public companies. Belgium, Britain, Germany, Australia and New Zealand are all considering or have implemented similar legislation. Why not Canada? In Canada, Quebec has brought in a law, Bill 53, which makes it mandatory, by 2011, that the province's Crown corporations have gender parity on the boards.

It is incumbent on me to point out over and over again that it is from the province of Quebec that leadership has so often been taken on matters of human rights and of affirmative action.

Women have made substantial gains in the workplace during recent decades. Nevertheless, it is still true that the higher up in a company we look, the lower the percentage of women. As noted by the Conference Board of Canada, in a report published in 2011 on women in senior management, or lack thereof, the proportion of women in senior management positions has virtually flatlined over the last two decades, even though there has been a steady increase in overall female labour participation.

The Conference Board said that since 1987 men have been two or three times more likely than women to be senior managers. Women still remain under-represented in many occupations, most noticeably in high-level posts. While women make up 47 per cent of the Canadian labour force, they occupy only 14 per cent of board seats among the 500 largest Canadian companies. The 2010 Catalyst Census, whose board is full of the corporate giants of this country, shows that nearly one third of companies have no women executive officers at all.

We have to make better use of women's brains, their talents and their skills, and we have to give women the opportunity to demonstrate those. I argue that we should pass this bill.

The gender gap is not just an image problem. Research suggests that it can have real implications for company performance. A 2008 study conducted by McKinsey & Company suggests that companies with several senior-level women tend to perform better financially. A study from the business schools of Columbia University and the University of Maryland points to the evidence that greater female representation in senior management positions leads to, and is not merely a result of, better firm quality and performance.

The Conference Board of Canada's research also confirms this link between corporations' performance and the number of women on boards. Conference Board research surveyed corporations and found that those with two or more women on the board were far more likely to be industry leaders in revenues and profits. Boards with more women are also more likely to take an active role in setting the strategic direction and weighing long-term priorities. In fact, boards with more women surpass all-male boards in their attention to audit and risk oversight and control.

Hiring and retaining women at all levels also enlarges a company's pool of talent at a time when shortages are appearing throughout industries. As put by Ed Clark, the CEO of the TD Bank, companies that fail to embrace greater executive diversit will simply be "dead in the water."

Over time, a nation's competitiveness will depend significantl on whether and how it utilizes its female brains and talent. T maximize its competitiveness and development potential, ou country needs to achieve gender equality — that is, to give wome the same rights, responsibilities and opportunities as men.

Honourable senators, increasing the representation of wome on the boards of certain corporations and institutions is therefore, economically sound. However, removing barriers t the appointment of women in senior positions is, above all, question of justice. We should not look at this issue from a purel economic standpoint, but also from a human rights one Increasing women's representation in senior posts is also matter of fairness. Women should not be prevented fro occupying senior positions simply because they are wome Patriarchal practices in this century — among shareholders an other board directors — must come to an end. Bill S-203 is not a aberration; it is a practical and profitable necessity. After all, w know that the glass ceiling is cracking, so I say shatter it.

Hon. Céline Hervieux-Payette: I would like to ask a question o my colleague and thank her for her reflection.

I like the orientation of not necessarily giving credence to a ideology, but to the basic principles of our country, which is th Canadian Charter of Rights and Freedoms and the fact that w have Article 15. I share the honourable senator's view o the question of positive action rather than quotas. I never us the word "quota" anyway. I like to be very specific with m colleagues. In my bill, I would like honourable senators t recognize that it is a minimum of 40 per cent, men or women, so am not promoting that we should do the opposite.

Since the honourable senator is sitting with her colleagues on regular basis, I would like to know where the cracks are that w could join, she and I, to convince them that Canada's economi future would be better if we brought in more talent. Do we hav this talent, according to the honourable senator's knowledge? I Quebec we have some, and maybe there is some in Ontario.

Senator Nancy Ruth: Honourable senators, I would first sa that the pool of talent has been listed and advanced by women' organizations, I think for at least 50 years, perhaps longe through institutions like the Canadian Federation of Universit Women and the International Women's Forum, and at lowe levels through Zonta and business and professional women' clubs, and so on.

The pools are there, and the lists have been there, and they hav been sent to prime ministers' various appointments officers, ye still it does not always happen. However, it does happen. It is tru what Senator Frum has said about what the government is doin to assist women in entrepreneurial skills and development o leadership. There is no question about that.

• (1530)

Where are the cracks within this party that we can put th wedge in to break the ceiling open? Honourable senators, whe I get the answer, I will share it with you.

Senator Hervieux-Payette: This next question is for the honourable senator to carry forward to her female colleagues in their caucus because we will be addressing this matter for a while. I suggest we sit down to see how we can do this the way Senator Frum would like to, on a voluntary basis. I have not seen any results on the voluntary system.

It is not my choice, but the evidence is there. We see companies that thrive when they have women executives and women on their boards. They produce 35 per cent more profit. I wonder why we would not go in that direction, since the honourable senator's party would like to see Canada as the leading economy in the world.

Why not work together and find a solution? Currently, it is the only solution other OECD countries have found to change the situation. Actually, I must say that Spain will probably need all the women they have to get out of their mess.

(On motion of Senator Losier-Cool, debate adjourned.)

NATIONAL STRATEGY FOR CHRONIC CEREBROSPINAL VENOUS INSUFFICIENCY (CCSVI) BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cordy, seconded by the Honourable Senator Peterson, for the second reading of Bill S-204, An Act to establish a national strategy for chronic cerebrospinal venous insufficiency (CCSVI).

Hon. A. Raynell Andreychuk: Honourable senators, Bill S-204 is an extremely important bill, particularly to the province of Saskatchewan.

I have been looking at the national strategy, but more the implications to my province, which has long studied this issue. I would be prepared to complete my notes as quickly as I can and speak to it on Tuesday in full or Wednesday, depending on the Senate calendar. I propose to adjourn the debate at this time.

Hon. Andrée Champagne: (The Hon. the Acting Speaker): Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(On motion of Senator Andreychuk, debate adjourned.)

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SECOND REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Committee on Internal Economy, Budgets and Administration (*committee budgets—legislation)* presented in the Senate on October 27, 2011.

Hon. David Tkachuk moved the adoption of the report.

The Hon. the Acting Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to and report adopted.)

THE HONOURABLE LOWELL MURRAY

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Cowan, calling the attention of the Senate to the remarkable record of public service of our former colleague, the Honourable Lowell Murray, P.C., who served with us in this chamber for 32 years before his retirement on September 26, 2011.

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, my remarks will be very brief.

Senator Cowan has invited the Senate, in his words, "to correct a grievous wrong." He is asking the Senate to do exactly what Senator Murray wished not to happen. Senators will be aware that on several occasions, and to many people, Senator Murray asked that no remarks or so-called tributes be made on his retirement. It is a practice that many of us in the Senate find to be unwelcome and a misuse of the Senate's time. I note that Senator Carstairs arranged her departure to avoid this practice, and I will be following the same way when my time comes: no tributes.

Senator Carstairs, Senator Murray and I have in common the holding of the responsibility of leading the government in the Senate. Perhaps that gives us an insight into the use of time in this house and the danger of inside indulgences.

Speaking for myself, I think the age of the long, ritual encomium and canned biography has passed. Senators who want to express themselves can send private notes. I believe Senator Carstairs would want her wishes respected. I know that I will want my wishes respected. As a person who has known Senator Murray for more years than I care to count, I will respect his wishes.

Therefore, I suggest that the back door efforts of Senator Cowan should be closed. I know that all honourable senators will reflect carefully on this matter and that, in the spirit of affection and respect for our former colleague, Senator Murray, we will not use our positions here to disrespect his wishes. He has earned better treatment from us.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, it is Senator Banks' wish to take the adjournment on this inquiry.

(On motion of Senator Tardif, for Senator Banks, debate adjourned.)

[*Translation*]

BAHA'I PEOPLE IN IRAN

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Jaffer calling the attention of the Senate to the deteriorating human rights situation of the Baha'i people in Iran.

Hon. Roméo Antonius Dallaire: Honourable senators, I intend to speak about this topic, but I would like to have some time to better prepare myself to speak at the next sitting of the Senate.

(On motion of Senator Dallaire, debate adjourned.)

• (1540)

POVERTY

INQUIRY—DEBATE ADJOURNED

Hon. Fernand Robichaud rose pursuant to notice of November 3, 2011:

> That he will call the attention of the Senate to the issue of poverty in Canada — an issue that is always current and continues to have devastating effects.

He said: Honourable senators, before I begin my speech, I would like to apologize to Senator Verner, who was in the Senate Chamber. I did not notice that she had simply changed places.

Honourable senators, I would like to draw your attention to the issue of poverty, an issue that continues to exist, persist and do harm.

The issue of poverty is certainly not new. What is new is that we can openly admit that we have failed in our fight against poverty despite the good intentions of a number of governments in the past few decades. In this chamber and in the Senate committees, poverty has been the subject of countless discussions, studies and reports.

Honourable senators, a whole host of changes have been made to the Old Age Security Act over the years in order to reduce poverty among seniors. In that regard, the colossal work of Senator David Croll on poverty in Canada has been a driving force behind the development of social policies and programs in Canada. In fact, his 1971 report from the Special Senate Committee on Poverty is considered the bible on the issue of poverty in the country. His analysis and recommendations have definitively guided the government's actions with regard to the less fortunate in the country.

Senator David Croll did not mince words. He knew how to call a spade a spade and describe things as he saw them. It is not surprising, then, that his report opened with the words, "The poor do not choose poverty. It is at once their affliction and our national shame." This sad statement made 40 years ago unfortunately remains true today.

In 1991, the Standing Senate Committee on Social Affair Science and Technology produced a report called *Children i Poverty: Towards a Better Future*, on child poverty and povert among women and Aboriginals.

Senator Erminie Cohen published a report on child povert in 1997. That report, *Sounding the Alarm: Poverty in Canad* reported on the situation of poverty in the country 25 years afte the work of Senator Croll. She also recommended changes.

And what can we say about the Senate reports on povert among Aboriginals, seniors, and people living in rural areas tha underscore the links between poverty and mental health, menta illness and addiction?

Two years ago, Senators Eggleton and Segal presented th report called, *In From the Margins: A Call to Action on Poverty Housing and Homelessness* in which they make the observatio that, "In almost 40 years, many of the issues related to povert have not changed enough," noting, however, some improvemer in government programs and policies to reduce poverty amon children, low-income workers and seniors.

In the other place, poverty has been studied by committees. A recently as last year, the Standing Committee on Huma Resources, Skills and Social Development and the Status c Persons with Disabilities presented a report entitled *Federa Poverty Reduction Plan: Working in Partnership towards Reducin Poverty in Canada.*

What I am trying to say, honourable senators, is that poverty i Canada has been studied extensively and from every angle.

On September 13, 2011, a study conducted by the Conferenc Board revealed that, since the 1990s, the gap between the rich an poor has been widening more rapidly in Canada than in the re of the 17 most developed countries.

Over the past 30 years, studies have shown that the wealth have benefited from economic growth, while the middle class an the poor have suffered a decline in their standard of living. Thi situation could become decidedly dangerous. Consider, fo instance, the social upheavals we have seen over the past yea around the globe. That is why it is crucial that we put an end t this growing inequality.

I suspect that the mass movements that have spread acros North America — such as Occupy Wall Street and Occupy Ba Street — are symptomatic of the serious misgivings that more an more people around the world are feeling.

Are these people beginning to lose hope in a better world fo themselves and their families?

Do they see themselves stuck in front of an insurmountabl obstacle?

Do they think they can no longer get by or do anything t improve their lot in life?

I think the answers here are in the questions. But who are thes people? These are people who have lost their jobs, people who n longer have the energy to go on looking for another job, or wh

have lost all hope of finding another job. These people are aware that a small group of people holds all the wealth and only crumbs remain for everyone else. I dare say these are people who have lost confidence in the current system and who desperately want change. These are people who see the shocking salaries and bonuses paid to CEOs, bankers and financial executives, while they cannot meet their own basic needs.

The inequalities are striking. According to Statistics Canada, the after-tax income of families who are among the richest 10 per cent increased by 24 per cent between 1989 and 2004, while the income of the poorest families decreased by 8 per cent during the same period. For the poor families, the situation is even worse. It is time to take action.

My intention here is not to blame anyone, but to encourage a discussion so that we can move forward and eliminate the problem of poverty.

A recent report produced by the National Council of Welfare on September 28, 2011, essentially says that the effects of poverty in this country cost us $25 billion annually, but that poverty could be eradicated for half of that amount.

I find their approach to be interesting. It is easy to understand that by investing now, we can save in the future.

Furthermore, this report confirms that we already have a partial system to alleviate and eliminate poverty and that we need to "get the whole job done." This report clearly says that we must stop thinking of eliminating poverty in terms of spending and start thinking of it in terms of investing.

For example, as quoted in *Le Devoir*, the report says that in Calgary, "a spot in a homeless shelter costs the government $42,000 annually, and housing in prison or a psychiatric hospital costs $120,000 per person. However, a subsidized spot in supportive housing costs $15,000 per year, and an affordable housing placement costs half of that."

Quite often, people who cannot pay for their medications inevitably end up in the emergency room, and we know how expensive health care services can be.

» (1550)

There is inequality in Canada and there are connections between poverty and education, poverty and crime, and poverty and health care.

The failure to take action is very costly. Furthermore, by reducing the number of poor people, we benefit in the long term because, as people climb out of poverty, they can participate in and contribute to the economic development of the country.

We should examine how we provide social assistance. In most regions, social assistance is difficult to access. Furthermore, there is a multitude of rules that prevent recipients from getting off social assistance. For example, in some cases, if someone on social assistance finds a temporary job, they may lose all benefits, making it better for them to be unemployed.

This type of situation should be examined seriously and critically by the authorities responsible. I know that an anti-poverty plan, which has some very good ideas, has been developed in New Brunswick with input from the public, private and community sectors.

Unfortunately, some aspects of the plan, such as increasing the minimum wage, have been deferred. It is obvious that a concerted plan to help people get off social assistance and to provide information to help them become independent, would go far to radically reform Canada's income security system.

The National Council of Welfare report has a four-part plan which includes a Canada-wide strategy for solving poverty, a sustained investment plan, a design framework based on well-being, and a forum to bring together people and ideas in order to achieve the best possible results.

It is important not only to encourage people, but also to help them climb out of poverty.

Honourable senators, in conclusion, I simply hope to spark reflection about poverty, especially since the argument that poverty is expensive is easily understood by the rich people of this world. People's natural tendency is to keep their wealth for themselves, and not to redistribute it more equitable.

Most of all, we have to talk about poverty and the poor. The poor, the forgotten, the abandoned are human beings, people who are entitled to their dignity and, in my humble opinion, a fair share of this country's national wealth.

To eliminate poverty is to give these people what they need to take care of themselves, to suitably feed and house themselves. It would give them a reason to live and allow them to contribute to the well-being of society.

I would like each and every one of you to tell me how we could eliminate poverty. I believe we have to keep talking about it. The question I want answers to is, "How do you view the poor and poverty?"

(On motion of Senator Eggleton, debate adjourned.)

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO STUDY CBC/RADIO-CANADA'S OBLIGATIONS UNDER THE OFFICIAL LANGUAGES ACT AND THE BROADCASTING ACT

Hon. Maria Chaput pursuant to notice of November 16, 2011, moved:

> That the Standing Senate Committee on Official Languages be authorized to examine and report on CBC/Radio-Canada's obligations under the Official Languages Act and some aspects of the Broadcasting Act; and
>
> That the committee report from time to time to the Senate but no later than October 31, 2012, and that the committee retain all powers necessary to publicize its findings until December 31, 2012.

She said: Honourable senators, I believe it would be a good idea to give you some explanations as to why the Standing Senate Committee on Official Languages, after due consideration, has decided to address this issue.

There are a number of aspects to the mandate the committee has chosen and I would like to present a few to you. Why undertake this study now? First, because CBC/Radio-Canada is celebrating its 75th anniversary this year and it is a good opportunity to assess its performance with regard to official languages.

Second, CBC/Radio-Canada is facing many challenges, ranging from demographic changes to emerging new technologies and competitive market conditions. This presents an ideal opportunity to determine how it is handling these challenges and the repercussions in terms of official languages.

Third, many interested parties, including some committee members, are concerned about language requirements and the need to reflect regional diversity.

In June 2012, the public broadcaster will come before the Canadian Radio-television and Telecommunications Commission to renew its licences for its French- and English-language services.

The committee's goals are to determine whether CBC/Radio-Canada is meeting the requirements of the Broadcasting Act, specifically regarding offer of services in both official languages, equivalent quality, reflection of regional diversity; and to determine whether CBC/Radio-Canada is meeting the requirements of the Official Languages Act, specifically regarding communications with and services to the public, vitality of the official-language minority communities and advancement of linguistic duality.

The Hon. the Acting Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

[*English*]

BUSINESS OF THE SENATE

The Hon. the Acting Speaker: Pursuant to rule 7(2), the sitting is now suspended until 5:15 p.m. The bells will start ringing at 5:15 to call in the senators for the vote.

Am I permitted to leave the chair?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

• (1730)

(The sitting of the Senate was resumed.)

MARKETING FREEDOM FOR GRAIN FARMERS BILL

MOTION TO AUTHORIZE AGRICULTURE AND FORESTRY COMMITTEE TO STUDY SUBJECT MATTER—MOTION IN AMENDMENT NEGATIVED—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourabl Senator Plett, seconded by the Honourable Senato Patterson:

That, in accordance with rule 74(1), the Standing Senat Committee on Agriculture and Forestry be authorized t examine the subject-matter of Bill C-18, An Act to reorganiz the Canadian Wheat Board and to make consequential an related amendments to certain Acts, introduced in the Hous of Commons on October 18, 2011, in advance of the said bi coming before the Senate;

On the motion in amendment of the Honourable Senato Peterson, seconded by the Honourable Senator Cordy, tha this motion not now be adopted, but that it be amended b adding:

"and that the Standing Senate Committee o Agriculture and Forestry hold public hearings on th subject matter of Bill C-18 in the provinces of Alberta Saskatchewan and Manitoba between the date of th adoption of this motion and December 16, 2011."

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Banks	Losier-Cool
Campbell	Mahovlich
Chaput	Mercer
Cools	Merchant
Cowan	Mitchell
Dallaire	Moore
Day	Munson
De Bané	Peterson
Eggleton	Poulin
Fairbairn	Robichaud
Fraser	Sibbeston
Harb	Tardif
Hervieux-Payette	Zimmer—27
Hubley	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Martin
Angus	Meighen
Boisvenu	Meredith
Braley	Mockler
Brazeau	Nancy Ruth

Brown	Neufeld
Carignan	Nolin
Champagne	Ogilvie
Cochrane	Patterson
Comeau	Plett
Demers	Poirier
Di Nino	Raine
Duffy	Rivard
Eaton	Runciman
Finley	Segal
Fortin-Duplessis	Seidman
Frum	Smith (*Saurel*)
Gerstein	St. Germain
Housakos	Stewart Olsen
Johnson	Stratton
Lang	Tkachuk
LeBreton	Verner
MacDonald	Wallace
Manning	Wallin—49
Marshall	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

Hon. Tommy Banks: Honourable senators, let us try this again with a little more clarity and a little more specificity.

It is, as we have said, unconscionable that this move, which is dismantling a marketing process that has been in place for Canadian wheat farmers and barley farmers in the West for 70 years and that a significant majority of them rely on and that a significant majority of them, time after time and in way after way, have clearly supported and are now trying to defend and are relying on this place to defend — it is unconscionable that, in the context of the motion that is before us, which is to pre-study the bill, that pre-study should not include visits by the relevant committee to the places where the farmers are so that they can be heard in their place and not at their inconvenience and expense by coming here, and so that they can be heard with some veracity and they can demonstrate to senators and members of the relevant committee, which is the Standing Senate Committee on Agriculture and Forestry, the important facets of this matter. These facets need to be taken into account when we, in this place, make the end decision on this bill, which we will.

• (1740)

MOTION IN AMENDMENT

Hon. Tommy Banks: Honourable senators, I therefore move that this motion not now be adopted, but that it be amended by adding:

> "and that the committee hold public hearings on the subject matter of Bill C-18 in the Western Canadian communities of Red Deer, Alberta; Swift Current, Saskatchewan; and Portage la Prairie, Manitoba, among others, between the date of the adoption of this motion and December 14, 2011;
>
> and that the committee present its final report no later than December 15, 2011.".

This is in the spirit of the motion for pre-study. It amends the motion — which, parenthetically, could have been adopted today — in a way that will let us do our job properly.

The Hon. the Acting Speaker: Honourable senators, it was moved by Senator Banks, seconded by Senator Moore:

> That the committee hold public hearings on the subject matter —

An. Hon. Senator: Dispense.

The Hon. the Acting Speaker: Is there debate on the amendment?

Some Hon. Senators: Question.

The Hon. the Acting Speaker: Is the house ready for the question?

All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Acting Speaker: All opposed will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Acting Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Acting Speaker: Is there an understanding between the whips?

Senator Munson: We wish to defer, on behalf of the farmers, this vote to the next sitting of the Senate.

The Hon. the Acting Speaker: The vote is being deferred until the next sitting of the Senate.

[*Translation*]

ALLOTMENT OF TIME FOR DEBATE—
NOTICE OF MOTION

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, since I was unable to reach an agreement with the Deputy Leader of the Opposition regarding the allotment of time for debate of Motion No. 16, I give notice that, at the next sitting of the Senate, I will move:

> That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration of the motion number 16, concerning the Canadian Wheat Board;
>
> That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the motion; and
>
> That any recorded vote or votes on the said question shall be taken in accordance with rule 39(4).

[*English*]

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, I would like to put on the record that there has been no discussion in regard to the time allocation motion, no discussion about that particular motion going forward and whether we were agreed or not agreed to the time allocation motion. There have been general discussions about whether we would continue debating this particular motion this evening or whether votes would be involved. There will be a vote on Tuesday — a vote. That was the nature of our discussion, honourable senators.

[*Translation*]

Senator Carignan: Honourable senators, the Deputy Leader of the Opposition is confused about what was said. I asked the deputy leader how much time we should attribute to this debate and when we should end it. In response to this question, she was unable to give me the time, the period or the day when we coul finish. I therefore concluded that we had not come to a agreement with regard to setting a period of time. This seeme clear to me. Since we did not come to an agreement and since w were unable to estimate in any sort of definite way the time whe we could end the debate on this motion, I am justified in givin this notice under the rules.

[*English*]

Hon. Tommy Banks: With respect to the matter before us now honourable senators, I must say that it may be the case, on on side or another of this place, that someone else determines whe or whether a senator will speak. That is not the case on this side o the house. No one on this side of the house tells me when o whether I can speak.

(The Senate adjourned until Tuesday, November 22, 2011, a 2 p.m.)

Appendix

(*See p. 580.*)

Credit for Pre-Sentencing Custody: Data from Five Canadian Courts

Department of Justice Canada Ministère de la Justice Canada

Canada

Credit for Pre-Sentencing Custody: Data from Five Canadian Courts

Kelly E. Morton Bourgon

and

Diana Grech

rr11-08e

Content

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Highlights

- 41.3% of the offenders in this study were sentenced to a time served sentence and 34.3% of the offenders in this study were sentenced to between two days and one month of additional time in custody
- Just over one-third (34.2%) of the offenders spent less than one week in pre-sentencing custody; almost 72% spent less than one month in remand
- Very few offenders (6.6%) were in pre-sentencing custody for more than three months
- A higher proportion of males spent over three months in remand compared to females
- Offenders in Toronto spent a significantly shorter period of time in remand compared to the other sites
- Those who were convicted of a person-related offence as the most serious offence in their case spent the longest amount of time in pre-sentencing custody and were sentenced to the longest amount of additional time in custody
- Those convicted of an administration of justice offence as the most serious offence in their case spent the shortest amount of time in pre-sentencing custody and were sentenced to the least amount of additional time in custody
- There was a significant positive correlation between time in remand and length of the custodial sentence; as the length of the pre-sentencing custody increased so did the length of the custodial sentence
- Overall, credits were awarded in 95.3% of the cases; the majority of the time the credit ratio was 2:1
- In Whitehorse, the most frequent credit ratio awarded was 1.5:1
- In approximately two-thirds of the cases (64.3%), the credit was stated in open court
- Credits were stated in a higher proportion of cases in Ottawa compared to all other locations
- Overall, reasons for the credit given generally were not provided; when they were provided they were related to remand conditions or the general convention of providing a credit for time in pre-sentencing custody
- In approximately two-thirds of the cases (64.2%), the defence requested a credit for the offender; defence in Toronto were the least likely to request a credit, while those in Ottawa were the most likely to request a credit
- Credits were more likely to be requested when the offender was male, had spent more than three months in remand and was sentenced to between three months and two years less a day additional time in custody

Executive Summary

This report provides data on the use of pre-sentencing custody credits in five locations across Canada. While this study has some limitations, it is the first of its kind in Canada, and provides a baseline picture of the state of pre-sentencing custody credits prior to any changes made by legislation.

Currently, there is very little research on the use of pre-sentencing custody credits in the Canadian criminal justice system. According to subsection 719(3) of the *Criminal Code*, the court may take into account any time an offender spent in pre-sentencing custody when determining the sentence to be imposed, thus allowing for a 'credit' for any time served prior to sentencing. Credits were given at a 2:1 ratio due to the harsh conditions in remand facilities and because accused persons did not accumulate credit for remission while in pre-sentencing custody.

The purpose of the present report is to provide empirical data on the nature and extent of pre-sentencing custody credits in Canadian adult criminal courts and the factors that may be related to the awarding of these credits. Additionally, this research provides baseline data, which could be used to assess the impact of any changes in the legislation governing pre-sentencing custody credits (i.e., Bill C-25).

Data were collected prospectively at sentencing hearings for a sample of 994 cases where an adult offender spent time in pre-sentencing custody. The study was conducted in five Canadian courts (College Park Toronto, Vancouver, Ottawa, Halifax and Whitehorse) between June 2008 and November 2009.

The majority of the sample was male, with an average age of 36 years. In just over half the cases (51.2%), the offender had been convicted of a property offence as the most serious offence in their case. This was followed by administration of justice offences (27.9%) and person-related offences (17.6%). In over half the cases (58.4%), offenders were sentenced to an additional two to 30 days in custody. Very few offenders were given a federal term of imprisonment of two years or more. Overall, offenders in Toronto were given significantly shorter custodial sentences, and offenders in Halifax were given significantly longer sentences.

Overall, in this sample, 71.8% of the offenders spent one month or less in remand, with one-third of this group spending one week or less in pre-sentencing custody. Compared to the other cities, a higher proportion of offenders in Toronto and Vancouver spent one week or less in remand. In

Whitehorse[1] half (50.0%) of the offenders were in remand for between 31 and 90 days. Very few offenders were in pre-sentencing custody for more than three months in any of the five cities. Differences were also noted for gender, with a higher proportion of males spending more than three months in remand compared to females. Offenders whose most serious offence was an administration of justice offence spent a significantly shorter period of time in remand compared to those whose most serious offence was a property, motor vehicle or offence against the person. Those who were convicted of a person-related offence spent the longest period of time in pre-sentencing custody. Analyses revealed a positive correlation between time in remand and the length of the custodial term. As time in remand increased, so did the offenders' custodial term.

Overall, in 95% of the known cases a credit was awarded to the offender for time spent in remand (either for a ratio of 1:1 or higher). Variation existed across the five cities in terms of the extent that pre-sentencing custody credits were awarded. In over 90% of the total cases, offenders who spent time in remand received credit for that time; however, in Halifax, the proportion that received a credit was 75%. No differences in whether or not a credit was awarded were found for the gender of the offender, the most serious offence in the case and whether or not the offender spent a longer (91+ days) versus a shorter (less than 90 days) period of time in remand. All of those who were in remand for more than three months were awarded a credit. These results suggest that those sentenced to between two and 90 days were the least likely to be awarded a credit, and those sentenced to time served were the most likely to receive credit. The differences, however, were minimal.

Overall the credit ratio was stated in open court for just under two-thirds of the cases. Differences were noted across the court locations. The credit was stated in open court in over 80% of cases in Ottawa and just under two-thirds of cases in Toronto. In Vancouver, Whitehorse, and Halifax the credit was stated in approximately half of the cases. No differences were found in whether or not the credit was stated in open court by a short (less than 90 days) versus a long (more than 90 days) stay in remand. Differences, however, were found for the most serious offence (MSO) in the case and the length of the custodial term received. The credit was most often stated in cases where a person-related offence was the most serious offence compared to administration of justice and property offences. Credits were stated in a higher proportion of the cases where the offender received a provincial custody term over three months and it was least likely to be stated when the offender received a time served sentence.

[1] Note the sample size was small and therefore should be interpreted with caution.

In the majority of the cases (86%) a 2:1 credit ratio was awarded. In Whitehorse, a credit ratio of 1.5:1 was applied most frequently (80%). While a 1:1 ratio was applied in about 20% of the cases in Ottawa and Halifax, the 2:1 ratio was used almost exclusively in Toronto and Vancouver. There were no cases where a 3:1 credit ratio was applied. No differences were found with respect to gender, the MSO in the case, a short versus long remand time, the custodial sentence or the time spent in remand.

In almost two-thirds of the cases, defence counsel requested a credit be awarded to the offender. Defence counsel in Toronto were the least likely to request a credit, while defence counsel in Ottawa were the most likely to request a credit. A credit was more likely to be requested if the offender was male and spent more than three months in pre-sentencing custody. Credits were requested in a higher proportion of cases where the additional custodial time was between three months and two years less a day. They were least likely to be requested when the sentence was over two years. No differences were noted with respect to the MSO in the case.

1. Introduction

Pre-sentencing custody, or remand, refers to any time a person spends in remanded custody prior to being sentenced. Accused persons could be held in remand for a variety of reasons, including they are awaiting a decision on bail or they have not been awarded bail. In Canada, the use of pre-sentencing custody has increased dramatically in the last decade both in terms of the number of individuals admitted to remand and the length of time they spent in custody (Calverley, 2010).

Pursuant to subsection 719(3) of the *Criminal Code*:

> In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

A judge may take time spent in pre-sentencing custody into consideration to impose a shorter sentence than would otherwise be appropriate. In some cases, no additional imprisonment is handed down and the time already spent in remand is considered to be a sufficient sentence.

1.1 History of the Credit

Professor Allan Manson (2004) reported that the legislative history of the pre-sentencing custody issue is "long and, at times, discontinuous" (2004, p. 297). According to Manson, the origin of the current *Criminal Code* provisions can be traced back to the *Bail Reform Act 1970-1971-1972*. The changes created by this legislation were largely motivated by academic (Friedland, 1965) and governmental reports, including the *Report of the Canadian Committee on Corrections* (the *Ouimet Report*) in 1969 and the *Royal Commission Inquiry into Civil Rights* (the *McRuer Report*) in 1968.

In the *Ouimet Report*, the Canadian Committee on Corrections (1969) reported that many Canadian remand facilities were old and poorly equipped, the sanitation and living conditions were primitive, segregation of varying types of offenders was difficult and few programs[2] were available. Martin Friedland (1965) expressed similar concerns about the conditions of custody for those awaiting court appearances at the Don Jail in Toronto and argued that "custody is prejudicial to the outcome of the case" (Friedland, 1965, p. 124). He found that those who spent time in pre-sentencing custody were more likely to be convicted of an offence, sentenced to imprisonment and obtain longer sentences than those who did not spend time in pre-sentencing

[2] The Canadian Committee on Corrections states that "little is available in the way of program" (1969, 101) in institutions used to house those awaiting trial. The authors do not specify which types of programs (e.g., rehabilitative, educational, recreational) are lacking.

custody. As a result of these findings, it was recommended that the use of pre-sentencing custody be reduced (Canadian Committee on Corrections, 1969; McRuer, 1968) and that accused persons be credited for the time they spent in custody prior to being sentenced (Friedland, 1965). It was argued that since time in remand acts as punishment, it "should be taken into account by the magistrate if the accused is convicted" (Friedland, 1965, p. 108).

Following the *Bail Reform Act 1970-1971-1972*, statutory provisions allowed the courts to take pre-sentencing custody into account at sentencing. At this time, however, there were no guidelines that specified how or to what extent pre-sentencing custody was to be considered. As a result, a considerable amount of discretion was left in the hands of judges. Although it was not required that a credit be awarded, the courts established that it should generally be given unless there was good reason to deny it (*R. v. Rezaie*, 1996). Any attempt to use a mechanical formula to determine the credit ratio has been generally rejected by the courts (Manson, 2004; *R. v. Meilleur, 1981; R. v. Wust, 2000*). In the Supreme Court of Canada case of *R. v. Wust* (2000) Arbour J. saw "no advantage in detracting from the well-entrenched judicial discretion provided in s. 719(3) by endorsing a mechanical formula for crediting pre-sentencing custody" (para. 44).

Although the courts continued to support the use of discretion on a case-by-case basis, credit was generally awarded on a two-for-one basis (Kong & Peters, 2008; Manson, 2004; *R. v. Wust*, 2000; Roberts, 2005; Weinrath, 2009). For example, for every month the offender spent in remand, two months were subtracted from his or her intended sentence.

The 2000 Supreme Court case of *R. v. Wust* set out two reasons where the two-for-one credit was considered to be appropriate. Although these justifications had been cited before (*R. v. Rezaie*, 1996), it was not until this case that they were given Supreme Court authority, becoming the basis for future decisions dealing with the pre-sentencing custody credit issue. Arbour J. stated the following in her ruling:

> In the past, many judges have given more or less two months' credit for each month spent in pre-sentencing detention. This ratio *reflects not only the harshness of detention owing to the absence of programs*, but also *the fact that none of the remission mechanisms apply to that period of detention*. The credit cannot and need not be determined by a rigid formula that is thus best left to the sentencing judge (para 45).

Wust affirmed that the two widely accepted justifications for awarding the two-for-one credit were:

> (1) the harsh conditions in pre-sentencing custody, and
> (2) accused persons do not accumulate credit for remission when they are in pre-sentencing custody.

While the two-for-one credit ratio was generally considered to be standard, ultimately, it was within the judge's discretion to give more or less credit for time already served (Manson, 2004). The term 'enhanced credit' is often used to describe "credit for PSC [pre-sentencing custody] at more than the two-for-one rate" (Manson 2004, p. 316). Since the two-for-one convention was fairly well established, any attempt to award more credit than this warranted justification in the courts. This issue arose in a "small but expanding number of cases" (Manson 2004). It usually refers to credit at a three-to-one rate, but has reached four-to-one in some cases. An analysis of the case history led Manson (2004) to the conclusion that two-for-one credit was appropriate to compensate for lost remission and a lack of programs, but that enhanced credit was warranted under more unique, adverse circumstances. He proposed that "situations of deprivation, lack of hygiene, and other potential examples of harshness or inordinately severe personal effects would exacerbate the conditions of PSC [pre-sentencing custody] beyond this [the two-for-one] norm" (p. 316).

Prior to 2010, Parliament had not legislated standards for awarding pre-sentencing custody credits. Bill C-25: *Truth in Sentencing Act* came into force on February 22, 2010, limiting the credit for the time spent in pre-sentencing custody. The new legislation indicates that credit is generally to be awarded at a ratio of 1:1. It also provides for more credit, up to a maximum of one and one-half days for each day spent in custody, if the circumstances justify it. Although it is still within the discretion of the courts to award a pre-sentencing custody credit, these amendments have established guidelines that indicate how the credit should be calculated.

1.2 The Impact of Pre-Sentencing Custody Credits

Not only does the use of pre-sentencing custody credits have an impact on individual sentencing decisions, it also has broader implications for different sections of the criminal justice system. Research suggests that both the courts and the correctional system have been affected by the two-for-one sentencing convention (Kong & Peters, 2008; Weinrath, 2009).

1.2.1 Court Efficiency

Criminal justice officials have expressed concern that the granting of pre-sentencing custody credits creates an incentive for accused persons to purposely extend their time in remand in order to get double-time benefits at sentencing. This strategy could have serious implications for the court system since proceedings would be delayed while accused persons remained in remand accumulating credit. Michael Weinrath (2009) examined this theory by surveying provincial inmates. He surveyed a total of 226 remanded and sentenced persons at a Canadian Prairie correctional facility using open ended questions. When asked for their views on why remand rates have increased, the two-for-one practice was the second most cited factor. However, this only accounted for 11.8% of responses (22/226) as no one response was overwhelmingly reported. Additionally, the author did not address the two-for-one issue directly; instead he asked

broad questions about the increased use of remand. Given the limited amount of research investigating this issue, it is currently unclear whether this was a widespread practice.

1.2.2 Sentencing Patterns and Impact of the Remand Population

Over the last decade, the profile of adults entering provincial and territorial custody has drastically changed (Kong & Peters, 2008). The number of adults admitted to remand has been steadily increasing since the mid-1990s. In the fiscal year 2006/2007, provincial and territorial facilities saw 3% more adults admitted to remand than the previous year and 26% more than a decade earlier (Babooram, 2008). In addition, there has been a general trend towards longer periods of remanded custody. The proportion of remanded adults who spent less than a week in remand declined from 62% to 54% between 1996/1997 and 2005/2006 (Kong & Peters, 2008). The growth in the remand population has coincided with a decline in the number of admissions to sentenced custody (Babooram, 2008) and a shift toward shorter sentences (Kong & Peters, 2008). There are currently more adults in remand than there are adults serving a sentence in provincial and territorial custody (Calverley, 2010).

Canadian sentencing patterns have changed as remand rates have grown (Kong & Peters, 2008). During the last decade, the number of adults admitted to remand and the length of time they spend in custody awaiting trial or sentencing has increased and the number of adults admitted to sentenced custody and length of custodial sentences has decreased. Since an accused person who spends time in remand would receive a credit towards his or her final sentence (or in some cases would be sentenced to "time served" and spend no additional time in custody), pre-sentencing custody credits could be contributing to this trend. However, there is currently no empirical research that indicates how judges were applying credit for time served to their sentencing decisions before the coming into force of Bill C-25. Kong and Peters (2008) assert that further analysis is required to understand the connection between pre-sentencing custody credits, rising remand rates and changing sentencing patterns.

The growth of Canada's remand population has individual consequences for inmates in remand, as well as broader implications for criminal justice institutions. In addition to living in onerous conditions, accused persons awaiting trial or a sentencing decision must also make considerable personal sacrifices. They are separated from their family and friends and risk the loss of employment while in custody (Manns, 2005; National Council of Welfare, 2000; Trotter, 1999). Awaiting trial or sentencing in remand may also negatively impact the accused's ability to defend him or herself and could be prejudicial to the outcome of the case (Friedland, 1965; Hagan & Morden, 1981; Manns, 2005; National Council of Welfare, 2000). It is considerably more difficult for accused persons who are detained to find and communicate with a lawyer and it is nearly impossible for them to contact witnesses or uncover evidence (Friedland, 1965; Hagan & Morden, 1981; National Council of Welfare, 2000; Trotter, 1999). Remanded accused cannot enhance their credibility by engaging in activities that may mitigate their sentence such as

finding a job, compensating victims, or involving themselves in the community (Friedland, 1965; Manns. 2005; National Council of Welfare, 2000).

The impact of the increased remand population also extends to institutions within the criminal justice system. Both the police and the correctional system must deal with the economic costs and the strain on resources created by this growth. The police must transport defendants to their court appearances, detain them at the courthouse and testify at bail hearings (Office of the Auditor General, 2008b). Correctional staff must accommodate a greater number of daily admissions and discharges from remand facilities and pay to house, feed and guard the inmates while they await a trial or sentencing decision (Office of the Auditor General, 2008a). This population can be particularly difficult to manage due to unpredictability in terms of their length of stay and the need to separate them from sentenced offenders (Webster, 2009).

In order to develop a thorough understanding of how the two-for-one convention has impacted the criminal justice system, additional information about the use of pre-sentencing custody credits is required. Prior to the coming into force of Bill C-25, pre-sentencing custody credit ratios were determined on a case-by-case basis. Since this information was not systematically recorded, very little is known about how pre-sentencing custody credits were awarded before the amendments. This report provides empirical data on the nature and extent of pre-sentencing custody credits before the legislative changes.

2. Purpose of the Present Study

This purpose of the present study is to provide empirical data on the nature and extent of pre-sentencing custody credits in Canadian adult criminal courts and the factors that may be related to the awarding of these credits. Additionally, this research provides baseline data, which could be used to assess the impact of any changes in the legislation governing pre-sentencing custody credits (i.e., Bill C-25).

3. Research Questions

This study set out to answer the following research questions:

- To what extent are pre-sentencing custody credits awarded?
- What ratios are used when awarding pre-sentencing custody credits?
- Are reasons provided for the credit? If so, what are the reasons?
- What are the differences (e.g., offender characteristics, ratio of credit, etc.) between those who were remanded for a short period of time compared to those who were remanded for a longer period of time?

4. Methodology

4.1 Site Selection

Sites were selected based on two factors. Using the Adult Correctional Survey from the Canadian Centre for Justice Statistics, those provinces and territories that demonstrated the highest proportion of remanded inmates within their custodial population over a five year period (2001/2002 to 2004/05) were selected to be included in the study. This resulted in four provinces and one territory: Ontario, Manitoba, Quebec, British Columbia and Yukon. Additionally, it was felt that it was important to have a representative sample from each Canadian region; therefore Nova Scotia was added as it had the highest proportion of remanded inmates in the Atlantic region. A list of Census Metropolitan Areas was used to choose those sites where courthouses would be approached for participation in the study. The resulting sites were Halifax, Nova Scotia; Ottawa, Ontario; Toronto, Ontario; Winnipeg, Manitoba; Vancouver, British Columbia; and Whitehorse, Yukon.

Following data collection and analysis a decision was made to exclude the data from Winnipeg. Issues with respect to data reliability and comparability arose. It is anticipated that the data collected in Winnipeg will be verified to ensure accuracy and that they may be reported in a future study.

The ratio of pre-sentencing custody credit (i.e., 1:1, 2:1, 3:1) awarded by the courts is not systematically recorded. As such, it was necessary to collect data prospectively. All relevant information that was stated in open court was to be recorded on the data coding sheet. The paper file could be used in certain circumstances to complete missing data. Court clerks in each court site were asked to assign court personnel to fill out a one-page coding form over a three-month period for offenders who spent time in remand and who were subsequently convicted and sentenced.

The method for data collection varied slightly by site. In Toronto at the College Park court,[3] an independent coder who did not work for the courts was contracted by the Department of Justice. In all other jurisdictions court personnel collected the data as part of their regular duties. In Whitehorse, court record information was sent to the Department of Justice, Research and Statistics Division (RSD), and RSD staff completed the data coding sheet.

[3] Note that the location in Toronto was the College Park court location. Toronto has five adult criminal courts and the results from the College Park court location may not be representative of the other court locations in Toronto. Hereinafter referred to as the Toronto location.

The data coding sheet included the following variables:

- Gender;
- Date of birth;
- Date of sentencing;
- City;
- Remand facility;
- Time spent in remand;
- Type of offence (*Criminal Code* or *Controlled Drugs and Substances Act*); Sentence Information (including length of custodial or time served sentence and other types of sentence);
- Whether a credit was awarded and if so, the ratio of the credit;
- If the defence requested the credit;
- Whether the credit was stated in open court; and
- Recorded reasons for the credit given.

Data coding sheets were the same in each jurisdiction. All sites were subject to the same variable definitions. Some minor editorial changes were made to the variable names in some court locations, however, in order to reflect the terminology used by the court personnel.

Each data coding form was completed using information obtained at the sentencing hearing. Cases in Whitehorse had sentencing dates between June 4, 2008 and August 25, 2008. Cases in Toronto had sentencing dates between May 19, 2009 and August 21, 2009. Cases in Vancouver had sentencing dates between June 10, 2009 and September 25, 2009. Cases in Ottawa had sentencing dates between July 18, 2009 and November 12, 2009. Cases in Halifax had sentencing dates between August 31, 2009 and November 13, 2009.

5 Results

5.1 Sample Demographics

The sample was comprised of 994 cases where an adult offender spent time in remand and was then convicted and sentenced. Of these cases, 41.1% (n=409) were from Toronto, 31.2% (n=310) were from Vancouver, 20.8% (n=207) were from Ottawa, 4.0% (n=40) were from Halifax and 2.8% (n=28) were from Whitehorse. The average age of the offenders was 36.4 years.[4] The median age was 35.4 years, with the youngest offender being 18 years old and the oldest offender being 67 years old. The majority of the offenders were male (n=764; 77.4%).

[4] SD=10.45.

There were significant differences, however, with respect to gender distributions.[5] There was a higher proportion of female offenders (35.0%; n=143) in Toronto, compared to all the other locations (which ranged from 7.5% in Halifax to 17.9% in Whitehorse). Results should be interpreted with this in mind.

Offences for which the offender was convicted were ranked using the Canadian Centre for Justice Statistics' Seriousness Index. In 40.4% of the cases, offenders were convicted of 2 or more offences. When there were multiple convictions, the most serious offence (MSO) was chosen using the Seriousness Index. The MSOs were then amalgamated into the following overarching offence groups: person (e.g. assault, robbery, sexual assault, and firearm offences), property (e.g., theft, drug offences), administration of justice (e.g., fail to appear, breach of conditions) and motor vehicle (e.g., driving while impaired, dangerous operation). Table 1 provides a breakdown of these categories by court location. As can be seen, the majority of the convictions were for property (51.2%), administration of justice (25.9%) and person (21.4%) offences. There were very few motor vehicle offences (1.5%; n=15) in this sample. Given the number of motor vehicle offences, results for this group will be presented only where appropriate and of interest. In Toronto, Vancouver, and Ottawa the most common conviction was for a property offence. In Whitehorse, administration of justice offences were the most common conviction. In Halifax, there were convictions for equivalent proportions of property and administration of justice offences.

Table 1: Most Serious Conviction by City

City	Most Serious Offence Conviction				
	Person	Property	Administration of Justice	Motor Vehicle	Total
	n (%)	*n* (%)	*n* (%)	*n* (%)	*n*
Whitehorse	8 (29.6%)	3 (11.1%)	15 (55.6%)	1 (3.7%)	27
Toronto	100 (24.5%)	207 (51.2%)	95 (23.3%)	4 (1.0%)	408
Vancouver	56 (18.2%)	173 (56.2%)	76 (24.7%)	3 (1.0%)	308
Ottawa	36 (17.6%)	105 (51.5%)	57 (27.9%)	6 (2.9%)	204
Halifax	11 (27.5%)	15 (37.5%)	13 (32.5%)	1 (2.5%)	40
Total	211 (21.4%)	505 (51.2%)	256 (25.9%)	15 (1.5%)	987[6]

[5] χ^2 (1, N=987) = 62.59, p < .0001.

[6] Data on the *Criminal Code of Canada* or *Controlled Drugs and Substances Act* conviction section was unknown or missing in 7 (0.7%) cases.

Offences for which the offender was convicted were further categorized to determine whether or not the offender was convicted of an administration of justice offence, either on its own, or in conjunction with other convictions. In 49.1% of the cases, the offender was convicted of at least one administration of justice offence, on its own or in conjunction with another offence. The proportion of offenders with an administration of justice conviction varied somewhat across the court locations. In Whitehorse, 71.4% of the cases contained an administration of justice conviction. This proportion was 70.0% in Halifax, 58.9% in Ottawa, 49.9% in Toronto and 36.8% in Vancouver.

5.1.1 Sentences Handed Down by the Court

For the purposes of the following analysis, the custody sentence was defined as any additional time the offender would have to spend in jail. Analyses of the length of sentence do not include time served sentences, as the offender was deemed to have already spent an appropriate amount of time in pre-sentencing custody, and would not have to spend any extra time in sentenced custody. Of those who were given a custodial sentence, 376 offenders (41.3%) were given a time served sentence of either zero or one day, while the remaining 534 offenders (58.7%) were sentenced to additional time in custody. The proportion of offenders who received a time served sentence varied significantly across the five cities.[7] Time served sentences were handed down in over three-quarters (78.6%; n=22) of the cases in Whitehorse and about half of the cases in Vancouver (56.1%; n=170) and Halifax (50.0%; n=19). One-third (33.1%; n=117) of offenders who were sentenced to custody were given a time served sentence in Toronto and one-quarter (25.5%; n=48) received a time served sentence in Ottawa.

For those sentenced to additional time in custody, in this sample, offenders were sentenced to an average of approximately three months in custody (n=534; M=99.72 days),[8] after excluding their time in remand, and any credit they received for time spent in remand. Sentences ranged from 2 to 1,620 days, with a median of 30 days. Figure 1 below highlights the distribution of the time offenders were sentenced to custody[9] across the overall sample.[10] Over half of the offenders (58.4%; n=312) were sentenced to an additional one month or less in custody. One-quarter of the offenders (24.3%; n=130) were sentenced to between one and three months. Thirteen percent were sentenced to a provincial sentence of between three months and two years less a day (n=70). Only 4.1% of the offenders (n=22) received a federal sentence of two years or more.

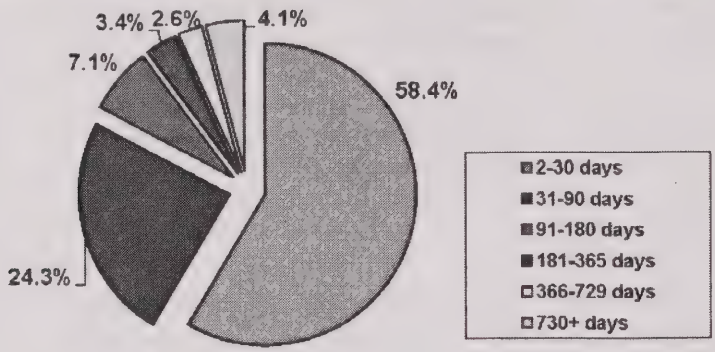
[7] χ^2 (4, N=910) = 73.58, p < .0001.

[8] SD=222.67.

[9] After taking into account their credited time.

[10] Due to the wide variability in the length of the custodial sentences they were divided into categories.

Figure 1: Sentence Length[11]



As can be seen in Figure 2, approximately half of those in Whitehorse (50.0%; *n*=3),[12] Vancouver (54.1%; *n*=72) and Ottawa (50.7%; *n*=71) were given sentences of one month or less. The proportion was larger in Toronto, with 68.2% (*n*=161) of those who received additional custody receiving a sentence of 30 days or less. In Halifax,[13] just over one-quarter (26.3%; *n*=5) were sentenced to between two and 30 days.

Between 16.7% and 18.8% of offenders in Whitehorse, Vancouver and Ottawa were given sentences of between three months and two years less a day. In Toronto, this proportion was 5.1% (*n*=12) and in Halifax this proportion was 36.8% (*n*=7).

As stated earlier, very few offenders (4.1%; *n*=22) were given a federal sentence. In all locations, less than 10% of offenders were sentenced to more than two years. The highest proportion of federal sentences were handed down in Vancouver (9.0%; *n*=12) and Halifax (10.5%; *n*=2). This only represented two persons in Halifax. No offenders in Whitehorse were given a federal sentence.

Overall, Toronto was found to be significantly different from all other locations; in that offenders were given shorter custodial sentences. Additionally, Halifax was found to have significantly

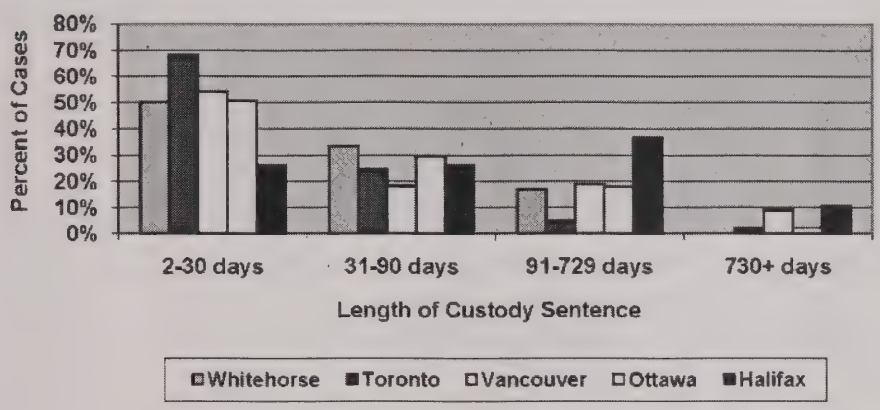
[11] After taking into account their credited time.

[12] There were only 6 cases in Whitehorse that were sentenced to two days or more in custody; therefore, the results in Whitehorse should be interpreted with caution and no generalizations may be made with respect to Whitehorse.

[13] There were only 19 cases in Halifax that were sentenced to two days or more in custody; therefore, the results in Halifax should be interpreted with caution and no generalizations should be made.

longer sentences than the other locations.[14] The sample size in Whitehorse was too small to allow any comparison to other locations in terms of sentence lengths.[15] These results, however, must be taken with caution as they do not take into account the nature of the offence, the number of convictions, or other factors that may play into the sentencing decision.

Figure 2. Custodial Sentence Length by City[16]



There was a relationship between the most serious offence for which the offender was convicted and the length of the custodial sentence. Figure 3 displays the custodial sentences by the most serious offence (MSO) category. The majority (85.0%; n=91) of those convicted of an administration of justice offence and 58.4% (n=174) of those convicted of a property offence were sentenced to an additional month or less in custody. These proportions were less than half for motor vehicle (42.9%; n=6) and person offences (36.4%; n=40).

Just under one-quarter (22.7%; n=25) of those convicted of a person related offence were sentenced to between three months and two years less a day, compared to less than 15% of those convicted of offences in the other three categories. Eleven percent (n=12) of those convicted of a person offence and 3.0% (n=9) of those convicted of a property offence were sentenced to a federal term. While the proportion was 7.0% for motor vehicle offences, it only represents one person. No offenders whose MSO was an administration of justice offence were given a federal sentence.

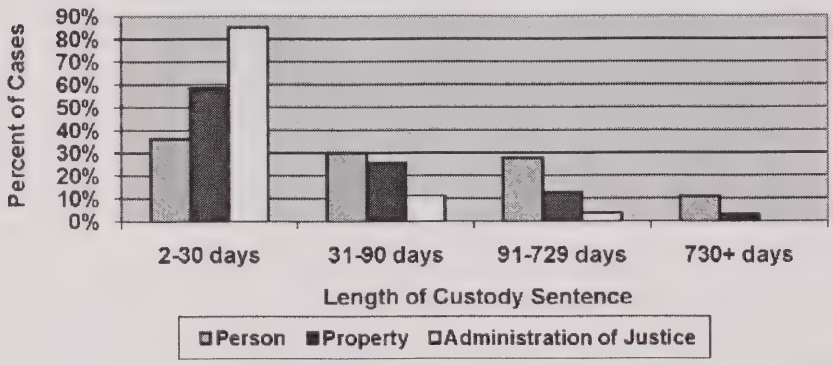
[14] Independent samples Mann-Whitney test at $p<.05$. Note that sample size in Halifax was small.

[15] Statistically significant differences could not be tested due to cell sizes of less than 5.

[16] Whitehorse n=6; Toronto n=236; Vancouver n=133; Ottawa n=140; Halifax n=19

Overall, those convicted of an administration of justice offence as their MSO were sentenced to the least amount of time compared to all the other conviction groups. Those convicted of person offences were sentenced to spend significantly more time in custody compared to those convicted of property offences.[17]

Figure 3. Custodial Sentence Length by Most Serious Offence[18]



5.1.2 Other Types of Sentences or Orders Imposed by the Court

The vast majority (91.5%; *n*=910) of the offenders in this sample were sentenced to either time served or additional time in custody. Along with that sentence, offenders were also given other types of sentences. These are highlighted in Table 2.

Just under half of all offenders were sentenced to a term of probation. The highest proportion was imposed in Vancouver (47.1%), with the lowest proportion found in Whitehorse (35.7%). No significant differences were found between the court locations.

Very few offenders were required to pay a fine or restitution as part of their sentence (2.0%). In all locations, with the exception of Halifax at approximately 13%, less than 10% of offenders were fined.[19]

Overall, about 20% of offenders were required to submit a DNA sample as part of their sentence. The proportions ranged from 18.3% in Toronto to 23.2% in Ottawa. In Whitehorse, only 3.6% of

[17] Independent samples Mann-Whitney test at p<.05.

[18] Person *n*=110; Property *n*=298; Administration of Justice *n*=107.

[19] Statistically significant differences could not be tested due to cell sizes of less than 5.

the sample (one offender) was required to submit a DNA sample. There were no significant differences found between court locations.[20]

Fewer than 20% percent of offenders were given a weapons prohibition order as part of their sentence. The highest proportion of offenders given such an order was in Ottawa (23.3%), with the lowest found in Whitehorse (7.1%). In Whitehorse, this represents two persons. [21]

Table 2. Other Sentences[22] by City

City	Type of Sentence or Order				
	Probation	Fine	DNA	Weapons Prohibition	Total
	n (%)	*n* (%)	*n* (%)	*n* (%)	*n*
Whitehorse	10 (35.7%)	2 (7.1%)	1 (3.6%)	2 (7.1%)	28
Toronto	169 (41.3%)	8 (2.0%)	75 (18.3%)	68 (16.6%)	409
Vancouver	146 (47.1%)	1 (0.3%)	61 (19.7%)	45 (14.5%)	310
Ottawa	84 (40.6%)	4 (1.9%)	48 (23.2%)	48 (23.3%)	207
Halifax	15 (38.5%)	5 (12.8%)	8 (20.5%)	6 (15.4%)	39
Total	424 (42.7%)	20 (2.0%)	193 (19.4%)	169 (17.0%)	993

5.2 Time Spent in Pre-Sentencing Custody

5.2.1 Length of Time in Remand

In this sample, there was wide variability in the time offenders spend in remand. On average, offenders spent approximately one month in pre-sentencing custody (n=955; M=30.58 days). [23] The range of days across the sample was from 1 to 548 days, with a median length of 13 days. In order to examine a variety of factors that may influence the period of time an individual spends in pre-sentencing custody (e.g., the court location, the most serious offence, the length of the custodial sentence), it was decided that categorizing individuals based on the amount of time they spent in pre-sentencing custody would be beneficial. Two strategies were employed. In the first, the amount of time in pre-sentencing custody was divided into five different categories. They were: less than one week, one to two weeks, two weeks to one month, one to three months and more than three months. In this fashion, we were able to provide the reader with concrete

[20] Whitehorse was excluded due to the small sample size.

[21] Statistically significant differences could not be tested due to cell sizes of less than 5.

[22] 91.5% of the sample were sentenced to time served or additional time in custody, therefore in the majority of the cases, the 'other sentences' will be in addition to that sentence.

[23] SD=48.50.

information on individuals who spent these varied periods of time in remand. The second approach was to divide the individuals into two groups, those who spent three months or less in remand (short stay) and those who spent over three months in remand (long stay).[24] This allowed for direct statistical comparisons of those who spent a short period versus those who spent a long period of time in pre-sentencing custody.

Figure 4 below highlights the distribution of time spent in remand across the overall sample. As can be seen, just over one-third (34.2%; *n*=327) of the offenders were in remand for one week or less. There was an equivalent distribution between those who spent one to two weeks (19.0%; *n*=181), two weeks to one month (18.6%; *n*=178), and one to three months (21.6%; *n*=206) in pre-sentencing custody. Very few offenders were in remand for more than 91 days, or over 3 months (6.6%; *n*=63).

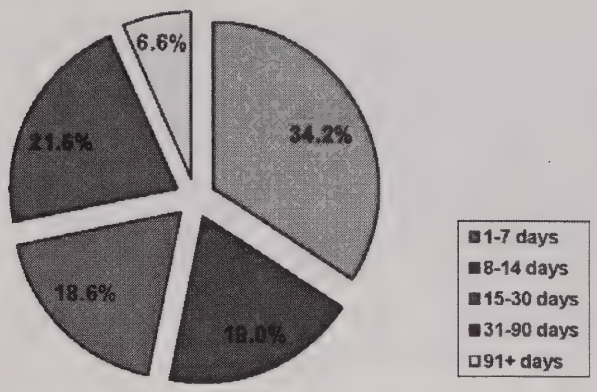
Compiled differently, almost 72% of the offenders spent less than one month in pre-sentencing custody, 21.6% were in remand for one to three months and the remaining 6.6% were in remand for over three months. No differences were found between those who spent less than three months and those who spent over three months in remand with respect to the court location or the age of the offender.

Differences were found between males and females according to the length of time they spent in pre-sentencing custody. A significantly higher proportion of males[25] (7.8%; *n*=57) spent over 91 days in remand compared to females (2.3%; *n*=5).

[24] If a shorter stay in remand was defined as one month or less in pre-sentencing custody, with a longer stay defined as over three months, the same statistical differences emerged; therefore the decision was made to define the shorter stay as less than three months.

[25] $\chi^2 (1, N=948) = 8.17, p < .01$.

Figure 4. Remand Length

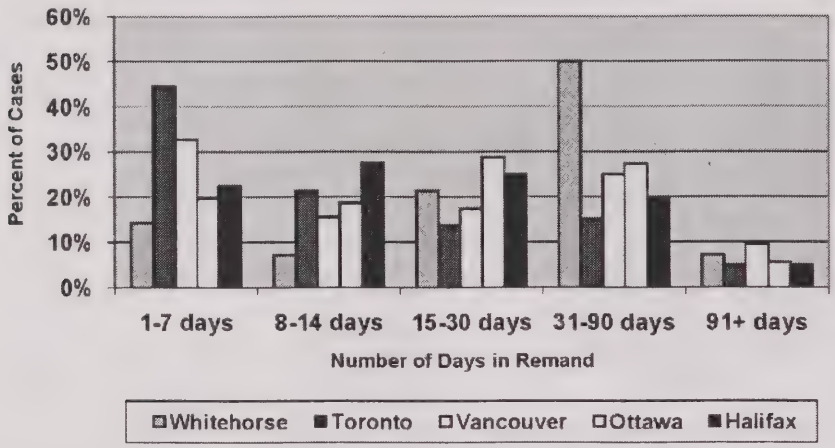


Significant differences[26] were found for the five categories of time in remand and court location (see Figure 5). When looking at the specific sites almost half (44.6%; *n*=178) of the offenders in Toronto and approximately one-third (32.6%; *n*=99) of those in Vancouver spent less than 7 days in remand. This is compared to 14.3% (*n*=2) of those in Whitehorse.

Half of the offenders in Whitehorse[27] (*n*=7) spent between 31 and 90 days in remand, compared to smaller proportions in all the other court locations. Less than 10% of all offenders, in each site, spent over 91 days in remand. Overall, Toronto was found to be significantly different from all other sites, with offenders spending a shorter amount of time in pre-trial custody.[28]

[26] χ^2 (12, *N*=941) = 66.25, $p < .001$; Whitehorse was excluded from the analysis due to cell sizes less than 5.
[27] Note that the sample size in Whitehorse was small; therefore, results should be interpreted with caution.
[28] Independent samples Mann-Whitney test at p<.05.

Figure 5. Remand Length by City[29]



It should be noted, however, that the time spent in remand as described above does not take into account factors that may contribute to a longer stay. Such factors may include, but are not limited to the complexity of the case, the number of appearances, whether the location is remote, etc.

5.2.2 Offence Severity

Two proxies to examine offence severity were utilized in this study. The first was the most serious offence category (MSO). As described earlier, the MSO was designated to represent the case. A person-related offence (21.4%) was deemed to be more serious than a property offence (51.2%), which was deemed more serious than an administration of justice offence (25.9%). While motor vehicle offences (1.5%) were separated from the other offences, there were very few of these; therefore, they will only be mentioned where appropriate. Using this severity index, a person-related offence is the most severe and therefore 21.4% of this sample was sentenced for more severe offences.[30]

The second severity proxy is the custodial sentence the offender received. Of the 910 offenders who were sentenced to a custodial sentence, 41.3% (n=376) were sentenced to a time served sentence (zero or one day). When taking into account those sentenced to time served, just under half (48.6%) were sentenced to between two and 90 days, 7.7% were sentenced to between three months and two years less a day, and 2.4% were sentenced to a federal sentence over two years.

[29] Whitehorse n=14; Toronto n=399; Vancouver n=304; Ottawa n=198; Halifax n=40.

[30] Note that this includes persons convicted of simple assault.

Using this severity index those sentenced to over three months would be considered more severe and therefore 10.1% of the sample was sentenced for more severe offences.

5.2.3 Length of Time in Remand by Most Serious Offence

Differences with respect to time spent in remand by MSO category were found, as can be seen in Figure 6. Those who were charged with a person-related offence spent the longest amount of time in pre-sentencing custody. Half (50.2%) of those who had an administration of justice charge as their MSO and one third (33.5%) of those with a property offence as their MSO spent less than one week in remand. In comparison, 19.5% of offenders charged with a person-related MSO and seven percent of offenders charged with a motor vehicle MSO[31] were in remand for less than one week. About one-third (35.7%) of the offenders charged with a motor vehicle MSO and approximately 20% of all other offenders spent between two weeks and one month in remand. Very few (10.7%) offenders who were charged with an administration of justice offence spent greater than one month in pre-sentencing custody.[32]

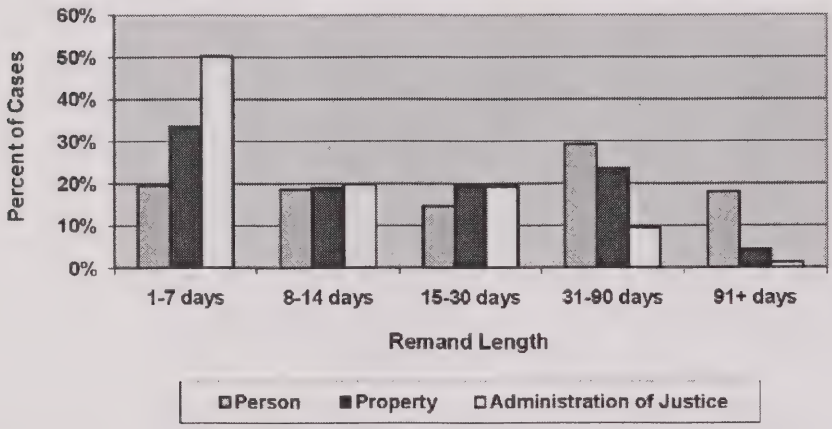
Overall, those charged with administration of justice offences spent a significantly shorter period of time in remand compared to all the other MSO groups. Additionally, those charged with property offences spent significantly less time in pre-sentencing custody compared to those charged with person offences.[33]

[31] Note that the sample size for motor vehicle MSO is small and therefore results should be interpreted with caution.

[32] Chi-square statistical significance could not be tested due to cell sizes of less than 5.

[33] Independent samples Mann-Whitney test at $p<.05$.

Figure 6: Remand Length by Most Serious Offence[34]



Longer stays in remand were related to the type of offence for which the offender was convicted. When examining short versus long periods of time in remand, significant differences[35] were found for remand time by the most serious offence category (see Table 3). The types of crimes for which offenders spend shorter or longer periods of time in remand differ. Overall, very few (6.5%) offenders spent more than 91 days in remand. However, 18.0% of offenders with person-related offences spent more than 91 days in pre-sentencing custody. This is significantly higher than persons who were convicted of a property (4.3%) or administration of justice offence (1.2%).

Table 3. Remand Length by most Serious Offence

Most Serious Offence	Time in Remand		
	Less than 90 Days	More than 91 Days	*Total*
	n (%)	*n* (%)	*n*
Person	168 (82.0%)	37 (18.0%)	205
Property	466 (95.7%)	21 (4.3%)	487
Admin of Justice	240 (98.8%)	3 (1.2%)	243
Motor Vehicle	13 (92.9%)	1 (7.1%)	14
Total	887 (93.5%)	62 (6.5%)	949

[34] Person n=205; Property n=487; Administration of Justice n=243.

[35] χ^2 (3, N=949) = 59.63, p < .001.

5.2.4 Length of Time in Remand by Custodial Sentence

There was a significant positive correlation between time in remand and the length of the custodial sentence,[36] indicating that as the length of time in pre-sentencing custody increased, so did the length of the custodial sentence. Figure 7 displays the length of time spent in remand by the length of the custody sentence. Note that the custody sentence is defined as any additional time the offender was required to spend in jail and does not include any credit awarded for, or time already spent, in remand. Sentences of zero or one day were deemed to be time served sentences and were not included in this analysis. There were minimal differences in the distribution of the remand categories of one to seven days and eight to 14 days; therefore, for the purposes of this analysis these two categories were aggregated together.

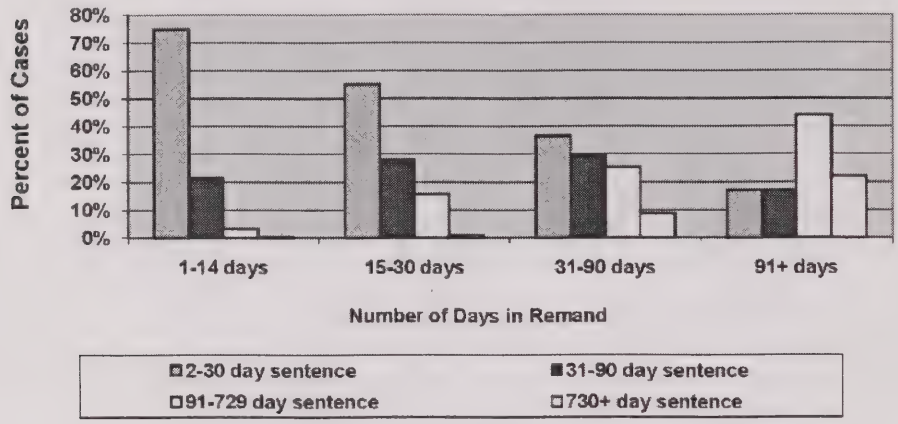
Those who spent less time in remand were more likely to receive a shorter custodial sentence. As the time in remand increased, so did the additional time that the offender was sentenced to custody. Three-quarters (74.8%) of those who spent two weeks or less in remand were sentenced to between two and 30 days, compared to 17.1% of those who spent over three months in remand.

Three percent (3.3%) of those who spent two weeks or less in remand, compared to 43.9% of those who spent over 3 months in remand, were sentenced to between three months and two years less a day in custody.

While there were a smaller number of offenders sentenced to a federal sentence, the trend holds, with 22.0% of those who spent over three months in remand being sentenced to a federal term compared to 1.5% of those who were in remand for less than 30 days.

[36] $r = .504, p < .01$.

Figure 7. Remand Length by Custodial Sentence Length

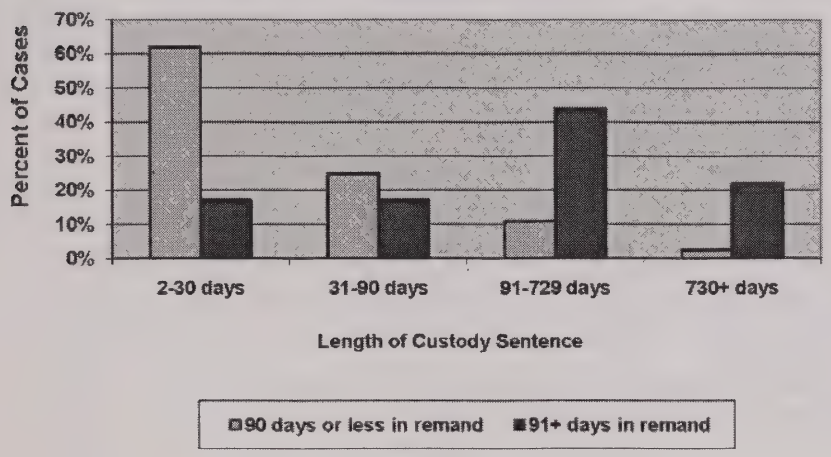


Those who spent 90 days or less in remand were considered to have spent a short period of time in remand, while those who spent 91 days or more were considered to have spent a longer period of time in remand. Significant differences[37] were also found between those who spent a shorter period of time in remand and those who spent a longer period of time in remand with respect to any additional time in sentenced custody[38] (see Figure 8). Of those who were in remand for less than three months, 61.9% were sentenced to additional custody of two to 30 days, 24.7% were sentenced to one to three months, 10.9% were sentenced to a provincial custody term over three months and 2.5% were sentenced to federal custody (over two years). Comparatively, for those who were remanded for more than three months, 17.1% were sentenced to between two and 30 days, an additional 17.1% were sentenced to between one and three months, 43.9% were sentenced to a provincial sentence between three months and two years less a day and 22.0% were sentenced to a federal term over two years.

[37] χ^2 $(3, N=519) = 79.72, p < .001$.

[38] Recall this does not include those offenders who were sentenced to time served of zero or one day.

Figure 8. Custodial Sentence by Short or Long Stay in Remand



5.3 Pre-Sentencing Custody credits

5.3.1 The Awarding of Pre-Sentencing Custody Credits

A credit was defined as receiving any compensation for time spent in pre-sentencing custody, which included any credit greater than, and including, one-for-one. No differences were found for the awarding of a credit in the various cities. Table 4 indicates that pre-sentencing custody credits were awarded in the vast majority of known cases.[39] Across all jurisdictions, credits were awarded 95.3% of the time. In all court locations, with the exception of Halifax, credits were awarded in over 90% of the known cases. In Whitehorse, 100% of cases were awarded a credit. In Halifax, credits were awarded 75% of the time, with 25% of the offenders receiving no credit for the time they spent in remand.[40]

[39] Data on whether or not a credit was awarded was unknown in 64 (4.9%) cases.

[40] Statistically significant differences could not be tested due to cell sizes of less than 5.

Table 4. Presence of a Pre-Sentencing Custody Credit by City

City	Was a credit awarded?		
	Yes	No	*Total*
	n (%)	*n* (%)	*n*
Whitehorse	27 (100%)	0 (0%)	27
Toronto	321 (91.5%)	30 (8.5%)	351
Vancouver	307 (99.4%)	2 (0.6%)	309
Ottawa	204 (98.6%)	3 (1.4%)	207
Halifax	27 (75.0%)	9 (25.0%)	36
Total	886 (95.3%)	44 (4.7%)	930

These proportions do not take into account other factors which may affect the decision to award a credit, such as the conditions of the remand facility or the availability of programming.

Given the high proportion of persons who were awarded credits, the following analyses with respect to the awarding of credits should be noted with caution. The analyses, however, suggest that there were no differences between cases where a credit was awarded and those where a credit was not awarded in terms of the gender of the accused, the most serious offence in the case, and whether or not the offender spent a short versus a long period of time in remand. It is interesting to note that if an offender spent over 91 days in remand, in 100% of all cases they were awarded a credit for their pre-sentencing custody time. While not conclusive, analysis of the custodial sentence suggests that those persons who were given a custodial sentence of between two and 90 days were least likely to be awarded a credit (92.2%) compared to those who were sentenced to time served (97.5%), those who were sentenced to 91 to 729 days (95.7%) and those who were given a federal sentence (95.5%). The differences, however, were minimal.

5.3.2 Stating Pre-Sentencing Custody Credits in Open Court

There was considerable variation in whether the credit awarded was stated by the judge in open court across court locations. Overall, the credit was stated in just under two-thirds of known[41] cases (see Table 5). Significant differences[42] on whether or not the credit was stated in open court were found with respect to city. In Ottawa, the credit was stated in open court 84.2% of the time. In Toronto and Whitehorse, the credit was stated in approximately 60% of the cases. In

[41] Data was unknown or missing for 4 (0.4%) cases.

[42] χ^2 (4, N=882) = 55.19, p < .0001.

Vancouver and Halifax, however, the credit was stated in about half the cases. Overall, credits were stated in open court in a significantly higher proportion of cases in Ottawa compared to the other four locations. Additionally, the credit was stated in a higher proportion of cases in Toronto compared to Vancouver.[43]

Table 5. Frequency Credit Stated in Open Court by City

City	Was a credit stated?		
	Yes	No	*Total*
	n (%)	*n* (%)	*N*
Whitehorse	15 (57.7%)	11 (42.3%)	26
Toronto	207 (64.9%)	112 (35.1%)	319
Vancouver	163 (53.8%)	140 (46.2%)	303
Ottawa	165 (84.2%)	31 (15.8%)	196
Halifax	17 (44.7%)	21 (55.3%)	38
Total	567 (64.3%)	315 (35.7%)	882

Offenders spending a short versus a long period of time in pre-sentencing custody did not differ in terms of whether or not the credit was stated in open court. Significant differences,[44] however, were noted based on the MSO category and the length of the custodial sentence the offender received.[45] The credit was more often stated in cases where a person offence was the MSO (73.1%; *n*=136) compared to when the MSO was an administration of justice offence (65.2%; *n*=150) or a property offence (60.4%; *n*=269). The credit was more likely to be stated in open court when the custodial term was a provincial sentence of between three months and two years less a day (80.3%; *n*=53). The credit was stated in 70.5% (*n*=256) of the cases where the offender was sentenced to between two and 90 days, in 59.1% (*n*=13) of the cases where a federal sentence was given and in 56.3% (*n*=197) of the cases where the offender was sentenced to time served.

5.3.3 Pre-Sentencing Custody Credit Ratios

Over 80% of the total sample received a credit ratio of 2:1 for their time spent in pre-sentencing custody. This was the most frequently awarded credit in all court locations, with the exception of Whitehorse, where a credit ratio of 1.5:1 was awarded in 80% of the cases. In Vancouver and Toronto, a 2:1 credit was awarded over 95% of the time. Three to one credits were not awarded

[43] Chi-square test at p<.05.

[44] χ^2 (2, *N*=861) = 9.27, $p < .01$.

[45] χ^2 (3, *N*=801) = 23.60, $p < .0001$.

in any of the court locations and 1:1 credits were awarded in 8.8% of the cases (see Table 6).[46] In just under one-quarter of the cases in Ottawa (21.5%; *n*=34) a credit of 1:1 was awarded. Although they were awarded infrequently in the other cities, there were a few cases in the other sites where the offender was awarded a 1:1 credit.[47]

In 3.8% of the cases in Ottawa, the ratio was mixed. In these instances a 1:1 ratio was applied to one period of time, while a 2:1 ratio was applied to another. Based on information provided by the courts, these cases involved multiple offences, where at least one offence appeared to be an administration of justice offence. This may suggest that it was felt the time spent in remand for an administration of justice charge did not warrant a 2:1 credit. In other words, an individual could spend time in remand for a substantive charge, and then be released on bail. They could then be remanded again for an administration of justice offence. The time spent in remand for the substantive charge would receive a 2:1 credit, while the second stay in pre-sentencing custody for the administration of justice charge would receive a 1:1 credit.

Table 6. Credit Ratios Awarded by City

City	Ratio n (%)				
	1:1	1.5:1	2:1	Mixed	*Total*
Whitehorse	2 (13.3%)	12 (80.0%)	1 (6.7%)	0 (0%)	15
Toronto	9 (4.3%)	1 (0.5%)	197 (95.2%)	0 (0%)	207
Vancouver	1 (0 6%)	2 (1.2%)	161 (98 2%)	0 (0%)	164
Ottawa	34 (21.5%)	8 (5.1%)	110 (69.6%)	6 (3.8%)	158
Halifax	3 (18 8%)	0 (0%)	13 (81 3%)	0 (0%)	16
Total	49 (8 8%)	23 (4.1%)	482 (86.1%)	6 (1 1%)	560

Given the high proportion of persons who were given a 2:1 credit, the following analyses with respect to the ratio of credits should be noted with caution. There were no differences in the credit ratio awarded in terms of the gender of the offender, the MSO in the case, whether the offender spent a short versus a long period of time in remand or the custodial sentence received.

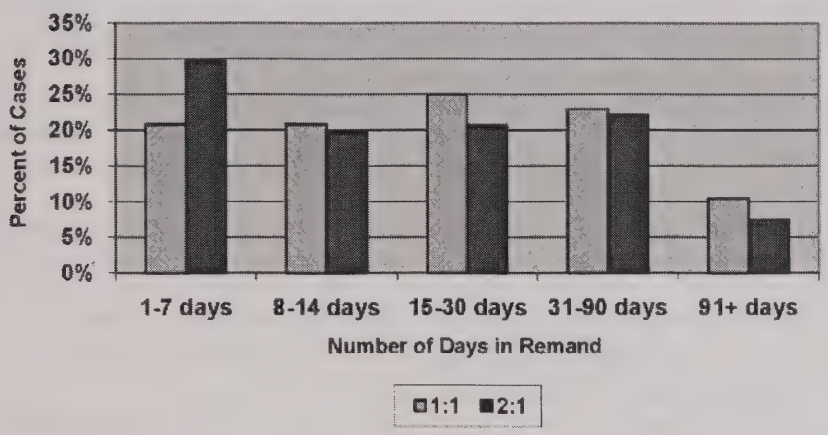
Figure 9 demonstrates the proportion of persons who were given a credit by the amount of time they spent in remand. No significant differences were found. Of those who received a 1:1 credit, 20.8% spent one to seven days in remand, compared to 29.9% of those who were given a 2:1 credit. Similarly, of those who received a 1:1 credit, 22.9% spent one to three months in remand,

[46] Statistically significant differences could not be tested due to cell sizes of less than 5.

[47] While 1:1 credits were awarded 18.8% of the time in Halifax, this represents 3 of 16 cases. Similarly, in Whitehorse, 13.3% of the time a 1:1 credit was awarded, representing 2 of 15 cases.

compared to 22.2% of those who were given a 2:1 credit. Credit ratios of 1.5:1 were not included in the figure as they represent only 20 cases.

Figure 9. Remand Length by Credit Ratio



5.3.4 Reasons for Pre-Sentencing Custody Credits

Overall, in the majority of the cases, reasons were not provided for the credit given. Reasons were given in approximately one-quarter of the cases in Halifax (26.3%). In Vancouver and Ottawa, however, reasons were provided less than 10% of the time. In Toronto and Whitehorse, they were provided less than 5% of the time (see Table 7).

Table 7. Frequency Reason Provided for the Credit by City

City	Was a reason provided?		
	Yes	No	*Total*
	n (%)	*n* (%)	*N*
Whitehorse	1 (3.6%)	27 (96.4%)	28
Toronto	9 (2.8%)	312 (97.2%)	321
Vancouver	22 (7.1%)	286 (92.9%)	308
Ottawa	16 (7.8%)	190 (92.2%)	206
Halifax	10 (26.3%)	28 (73.7%)	38
Total	58 (6.4%)	843 (93.6%)	901

Although reasons were only provided in a limited number of cases, similarities were observed among them. Some judges awarded a credit as a result of the offender's experience in pre-sentencing custody. For example, the accused was late for his or her court appearance due to being brought in late for his or her appearance from the detention centre or was given very limited time outside his other cell. More general explanations regarding pre-sentencing custody, such as the lack of programs or the harsh conditions in the remand facility, were also provided. Judges stated that a 2:1 credit was provided in some cases because it was the convention at the time. Previous court decisions were noted in a few of these cases. The 2:1 convention was also addressed in several cases where a reason was provided for *not* awarding a credit. In most of these cases the judges did not offer a 2:1 credit because the offender was in custody as a result of breaching a condition of his or her release.

5.3.5 Defence Request

Significant differences[48] were found with respect to whether the defence requested a pre-sentencing custody credit on behalf of the offender by court locations. Overall, in 64.2% of the known[49] cases, the defence made such a request. In approximately 90% of the cases in Whitehorse[50] and Ottawa, a credit was requested by the defence (see Table 8). In Toronto, a credit was requested by the defence in less than half the cases. Both the sample sizes in Whitehorse and Halifax were small and therefore results in these locations should be interpreted with caution. Overall, defence in Toronto requested a credit at a significantly lower rate than in any of the other sites. Additionally, defence in Ottawa requested a credit at a higher rate than all other locations.[51]

Table 8. Frequency Credit Requested by Defence by City

City	Did the defence request a credit?		
	Yes	No	*Total*
	n (%)	*n* (%)	*n*
Whitehorse	12 (92.3%)	1 (7.7%)	13
Toronto	171 (42.3%)	233 (57.7%)	404
Vancouver	220 (77.7%)	63 (22.3%)	283
Ottawa	170 (88.1%)	23 (11.9%)	193
Halifax	20 (66.7%)	10 (33.3%)	30
Total	593 (64.2%)	330 (35.8%)	923

[48] χ^2 (3, N=910) = 153.93, p < .001.

[49] Data was unknown or missing for 71 (7.1%) cases.

[50] Note there were only 13 cases in Whitehorse where information on defence request was available; therefore, results should be interpreted with caution.

[51] Differences with Whitehorse could not be evaluated due to the cell size less than 5.

There were no differences on whether the defence requested the credit based on the MSO in the case.

Differences in whether the defence requested a credit were also found for gender. Defence were significantly[52] more likely to request a credit when the offender was male (66.2%) compared to when the offender was female (57.4%); however, the difference in proportions is small.

Defence requested a credit in a significantly[53] larger proportion of cases when the offender spent more than 91 days in remand (85.2%) compared to when the offender spent less than three months in remand (62.6%).

Significant differences[54] were found with respect to the custodial sentence the offender was given and whether or not the defence requested a credit. The defence requested a credit in a higher proportion (85.3%) of cases where the offender was sentenced to between three months and two years less a day compared to when the offender was sentenced to time served (67.9%), two to 90 days (60.7%) or a federal sentence of two years or more (55.0%).

6. Discussion

Data were collected prospectively at sentencing hearings for a sample of 994 cases where an adult offender spent time in pre-sentencing custody and was subsequently sentenced in five Canadian courts (Toronto, Vancouver, Ottawa, Halifax and Whitehorse) between June 2008 and November 2009. The majority of the sample was male, with an average age of 36 years. In Toronto, Vancouver and Ottawa, approximately half of the offenders were convicted of a property offence as their most serious offence (MSO). In Whitehorse, just over half of the offenders were convicted of an administration of justice offence as their MSO. In Halifax, there was an equivalent distribution of property, administration of justice and person-related offences.

The Majority of Offenders were Sentenced to an Additional Month or Less in Custody

Overall, 41.3% (n=376) of the offenders in this sample were sentenced to time served, following any time spent in, and any credit received, for remand. Variation in time served sentences was found by location, with over half the offenders in Whitehorse, Vancouver and Halifax receiving such a sentence.

[52] $\chi^2(1, N=917) = 5.54, p < .05$.
[53] $\chi^2(1, N=893) = 12.65, p < .001$.
[54] $\chi^2(3, N=845) = 17.95, p < .001$.

Of the remaining offenders (*n*=534) who were sentenced to spend additional time in custody, over half (58.4%; *n*=312) were sentenced to spend an additional 30 days or less in custody. Very few offenders (4.1%; *n*=22) were sentenced to a federal term of over two years. This is comparable to the national data from 2008/2009, which reports that 53% of offenders received a custodial sentence of one month or less and 2% were given a federal sentence (CCJS, Data Tables 2008/2009). Differences emerged with respect to court location. In Toronto, offenders were given significantly shorter custodial sentences, compared to the other locations. In Halifax, custodial sentences were significantly longer than all other locations.[55]

Differences also emerged with respect to the MSO for which the offender was sentenced. Cases where an administration of justice offence was the MSO resulted in shorter sentences than the other offence groups (person, property, motor vehicle). Cases where a person-related offence was the MSO resulted in significantly longer sentences than property offenders. The length of the sentence appears to be in line with the severity of the offence, with those convicted of the least serious offences (administration of justice offences) receiving shorter sentences, and those convicted of an offence which caused harm to another individual (person offences) receiving the longest sentences. It is important to note, however, that these results do not take into account other factors which may play a role in the sentencing decision, such as the number of convictions, the offender's criminal history, Aboriginal status, or the circumstances surrounding the crime.

Analyses revealed a positive correlation between time in remand and the length of the custodial term. Those who spent less time in remand were more likely to receive a shorter custodial sentence. As time in remand increased, so did the offender's custodial term. These results, along with the results on the length of time spent in remand according to the MSO, lend support to the notion that those who spend longer periods of time in remand do so because the crime for which they were charged, and the sentence they were likely to receive, was deemed to be more severe. It is possible that these cases, which may be more severe, may be more complex and therefore require more time to make their way through the criminal justice system.

Almost Three-Quarters of Offenders Spent one Month or Less in Remand

Overall, in this sample, 71.8% of the offenders spent one month or less in remand, with one-third of the sample spending one week or less in pre-sentencing custody. This proportion is in line with data compiled by the Canadian Centre for Justice Statistics, which reports that across

[55] Note that comparisons with Whitehorse could not be made due to the small sample size and cell sizes of less than 5.

Canada in 2008/2009, 77% of accused served less than 31 days in remand (CCJS, Data Tables 2008/2009). Differences emerged between the court locations with respect to the amount of time offenders spent in remand. A higher proportion of offenders in Toronto and Vancouver were spending between one and seven days in remand. In Whitehorse, although the sample size was small, half of the offenders were in remand for between 31 and 90 days. In Ottawa and Halifax, the distributions across the various time periods were roughly equivalent, however, in Ottawa, a slightly higher proportion of the offenders were spending between 15 and 90 days in remand. Overall, very few offenders were in pre-sentencing custody for more than 91 days. Differences were also noted for gender, with a higher proportion of males spending more than three months in remand compared to females.

Two offence severity proxies were employed in this study, one using the MSO for which the offender was convicted and the other using the custodial sentence length. Significant differences were found for both severity proxies by length of time in pre-sentencing custody. With respect to the MSO, offenders whose MSO was an administration of justice offence spent a significantly shorter period of time in remand compared to those whose MSO was a property, motor vehicle or person offence. Those who were convicted of a person related offence, on the other hand, spent the longest period of time in pre-sentencing custody.

It is likely that those whose MSO was a person-related offence, where there is a victim, are more likely to be denied bail and kept in remand for a longer period of time in order to ensure the safety of the victim(s) or society in general. Those who commit a property or administration of justice offence may initially be remanded by the police, but may only be held for a short period of time as they are likely to be released into the community by a Justice if they do not pose a threat to the safety of the community. It is possible that offenders who commit a person-related offence may also spend a longer period of time in remand because the case is more complicated and more steps are required before a plea is entered or a trial is concluded (e.g., there are additional/longer negotiations with the Crown, it takes longer to resolve the question of bail, more witnesses must be consulted, etc.). Offenders who are not released on bail remain in remand until these steps are completed and the case is resolved. Although those who were convicted of motor vehicle offences were held for a significantly longer period of time, the sample size is relatively small and therefore no generalizations can be made about this group.

With respect to the second severity proxy (the length of the custodial sentence), as time in remand increased so did the additional time in custody. Significant differences were found for those who spent a shorter versus a longer period of time in pre-sentencing custody. A higher proportion of those remanded for less than three months were sentenced to a shorter amount of additional time in custody. Conversely, a higher proportion of those who spent more than three months in remand were sentenced to a longer period of additional custody. These results suggest

that there is a possible link between the amount of time in pre-sentencing custody and the severity of the case.

Pre-Sentencing Custody Credits Awarded the Majority of the Time; the Most Common Ratio was 2:1

Overall, in 95% of the known cases a credit was awarded to the offender for time spent in remand (either for a ratio of 1:1 or higher). This finding suggests that the courts have been following the decision in *R. v. Rezaie* (1996), which states that credit should generally be awarded unless there is good reason to deny it. Variation existed, however, across the five cities in terms of the extent that pre-sentencing custody credits were awarded. In over 90% of the total cases, offenders who spent time in remand received credit for that time, however, in Halifax, 75% received a credit. In other words, credits were not awarded in one-quarter of cases in Halifax. In Halifax, it is possible that judges would deny a credit because the time spent in remand had been taken into account at sentencing for another case involving the same offender. Presumably, offenders in these circumstances would be spending time in remand for more than one case. While this may occur in other courts or jurisdictions, Halifax was the only location that demonstrated this result. No significant differences in whether or not a credit was awarded were found by the gender of the offender, the most serious offence in the case and whether or not the offender spent a long versus a short period of time in remand. Interestingly, however, is that 100% of those who were in remand for more than three months were awarded a credit. While not conclusive, results suggest that those sentenced to between two and 90 days were the least likely to be awarded a credit, and those sentenced to time served were the most likely to receive credit. The differences, however, were minimal. It is possible that the judge may be more likely to award a credit in time served sentences, as this allows the judge to reduce the sentence so that the offender does not have to spend any extra time in custody.

When a credit was awarded to the offender, overall the credit ratio was stated in just under two-thirds of the cases. Differences were noted across the court locations. The credit was stated in open court in over 80% of cases in Ottawa and just under two-thirds of cases in Toronto. In Vancouver, Whitehorse, and Halifax the credit was stated in approximately half of the cases. No differences in the stating of the credit were noted for a short versus long stay in remand. Differences, however, were found for the MSO in the case and the length of the custodial term received. The credit was most often stated in cases where a person-related offence was the most serious compared to administration of justice and property offences. Credits were stated in a higher proportion of the cases where the offender received a provincial custody term over three months. The credit was least likely to be stated when the offender received a time served sentence.

In the majority of the cases (86%) a 2:1 credit ratio was awarded. This finding lends empirical support to previous research that found that the 2:1 ratio was widely considered standard (Kong

& Peters, 2008; Manson, 2004; Roberts, 2005; Weinrath, 2009). There were some differences, however, with respect to the court location. In Whitehorse, a credit ratio of 1.5:1 was applied most frequently, in 80% of the cases. It appears that awarding a credit of 1.5:1 is convention in the Yukon. While a 1:1 ratio was applied in about 20% of the cases in Ottawa and Halifax, the 2:1 ratio was used almost exclusively in Toronto and Vancouver. There were no cases where a 3:1 or higher credit ratio was applied. There were no differences found with respect to gender, the MSO in the case, a short versus long remand time, the custodial sentence or the time spent in remand.

It appears as though the courts were willing to depart from the 2:1 convention when it was deemed appropriate. Judges commonly exercised the discretion provided in Section 719(3) of the *Criminal Code* and affirmed in *Wust* (2000) to give more or less credit for time spent in remand. Although previous research has revealed that courts have awarded credit at ratios higher than 2:1 (Manson, 2004; Roberts, 2005), in this sample, it appears as though it is more common for judges to deviate from the norm to award credit at a lower ratio (e.g., 1:1, 1.5:1) than a higher one (e.g., 3:1, 4:1). There was no evidence in this study that an enhanced credit was awarded. These results suggest that the use of credit ratios higher than the 2:1 rate is extremely rare and as Manson (2004) suggests, it was probably reserved for cases with unique, adverse circumstances.

On the whole, reasons for the credit being awarded to the offender were not provided in open court. Across all sites, reasons were only provided in approximately 6% of the cases. While reasons for the credit were given in a quarter of the cases in Halifax, explanations were provided in less than 10% of cases in Vancouver and Ottawa and less than 5% of cases in Toronto and Whitehorse.

Overall, defence requested a credit on behalf of the offender in two-thirds of the cases. Significant differences were found with respect to location. In about 90% of cases in Ottawa and Whitehorse and approximately 80% of cases in Vancouver, the defence made such a request. In comparison, however, credits were requested in about two thirds of the cases in Halifax and less than half of the cases in Toronto. Defence counsel in Toronto were the least likely to request a credit, while defence counsel in Ottawa were the most likely to request a credit. It could be that defence in Toronto are not likely to request a credit for the offender due to the significantly shorter period of time spent in remand in that location. Of interest is that a smaller proportion of offenders (91.5%) were awarded a credit in Toronto, compared to Ottawa (98.6%). A credit was more likely to be requested if the offender was male and spent more than three months in pre-sentencing custody. If the offender spent a short period of time in remand (for example, a day or two), the defence appeared to be less inclined to request a credit be awarded. If, however, the offender spent over three months in remand, a credit was requested and thus reduced the amount of additional time the offender would spend in custody. While these results suggest that there are gender differences, it should be noted that males were also more likely to spend over three

months in pre-sentencing custody. Credits were requested in a higher proportion of cases where the additional custodial time is between three months and two years less a day. They are least likely to be requested when the sentence is over two years. It is possible that because of the small number of offenders sentenced to over two years no trend was identifiable. It is also possible that defence counsel did not request a credit because in cases where the sentence is longer (i.e., over two years), the credit may be negligible to reducing the amount of time the offender would spend in custody. Credits, however, were awarded in 95.5% of the cases where the offender received a federal sentence of more than two years, indicating that perhaps it wasn't always necessary for the defence to request a credit. No differences were noted with respect to the MSO in the case.

Pre-sentencing custody credits were not applied or discussed in a uniform way across these five court locations in Canada. Substantial differences were found in terms of the way that the pre-sentencing custody issue was addressed. These results suggest that Section 719(3) of the *Criminal Code* was being applied based on the norms established in each court, lending support to the idea that cases are processed in accordance with the "local legal culture" in each jurisdiction (Church, 1982; Steelman, 1997). Although local legal culture is generally discussed in terms of the efficiency with which cases are processed through the system, these findings suggest that legislation can be applied according to the informal practices, norms and expectations shared by court practitioners within a specific court.

7. Limitations and Future Research

There is very little research in Canada on the use of pre-sentencing custody credits. Consequently, this report provides valuable information that can be used to gain a better understanding of this issue. Since information regarding pre-sentencing custody credits has not been systematically recorded, this research was conducted prospectively by collecting data at sentencing hearings as they occurred. This is the first piece of research that investigates the awarding of pre-sentencing custody credits in Canada. It also provides a comparison of those who spent differing amounts of time in remand, with respect to such matters as the MSO for which the offender was convicted, as well as the sentence that was eventually handed down. While the data collected in this study is not national, it does provide a preliminary picture of the state of pre-sentencing custody credits in Canada. It also provides baseline data from which comparisons with legislative changes can be made.

This study, however, has several limitations. First, the data was collected from only five courthouses across Canada. Having access to additional locations would have provided a larger sample size that would be more generalizable to the country as a whole. The results also suggested that there were some significant differences among the locations, specifically with respect to how each location deals with the factors surrounding pre-sentencing custody (e.g., time spent in remand, awarding of credits, ratio, etc.). Having access to additional sites may have

provided for a more thorough assessment of any regional differences, or differences in court culture, that may have been present. Future research might include a wider variety of locations, with some in the same city, and with a larger sample size in each location.

Second, each location collected data for a period of three months and these months were staggered across the locations. It is possible that at different times of the year, remand and sentencing patterns differ, and this may have contributed to some of the results that showed differences among the locations. A longer data collection period may have not only increased sample size, but could have negated any seasonal differences which may have contributed to the results. Additionally, it would have allowed for a larger sample size in the smaller locations (Halifax and Whitehorse). This would have allowed for more certainty with respect to the results from these locations. Additionally, it would have been interesting to explore the differences between those who received a credit for their time in pre-sentencing custody and those who did not. In this study, only 44 individuals were not awarded a credit for their time in remand. A larger sample size may have produced more cases were such a credit was denied, and thus allowed for comparisons.

Finally, the data was collected at the sentencing hearing, primarily in guilty plea court. This limited the representativeness of the data to cases where the accused pleaded guilty, and did not include the potentially longer cases where the accused pleaded not guilty and went to trial. Additionally, because the data was being collected at the sentencing hearing, it was recognized that only a limited number of variables could be reliably captured. For example, no information was collected on the offender's criminal record, the offender's Aboriginal status, variables surrounding the commission of the offence (e.g., the degree of harm caused to the victim), victim impact statements, or the conditions in the remand facility where the offender was housed. Additionally, in very few instances were the reasons for the credit stated in open court. It is quite possible, therefore, that there were a variety of other factors that may have contributed to the judge's decision with respect to the credit and the sentence. Unfortunately, due to the unavailability of this information we were unable to assess their impact on either of these aspects.

Future research in this area could address the limitations outlined above and could also include interviews with key players in the criminal justice system, including justices, Crown counsel and defence counsel in order to investigate some of the reasons for the credit ratios that were awarded. While this study provides data with respect to the length of time a person may spend in remand, as well as the credit ratio awarded for that time, it does not provide ample reasons for why such credits are applied. Additionally, it would be of interest to understand why defence counsel, in some cases, are not requesting a credit on behalf of the offender.

A study conducted by Morton Bourgon and Solecki (2010) on bail in Canada with specific groups of offenders found that there were differences with respect to case characteristics and processing for those who were remanded and those who were released on bail. This study only focused on offenders who had spent time in remand. Additional research could compare a random sample of all types of offenders who were held in custody awaiting sentencing and those who were released into the community. Those who did not spend time in remand would act as a control group in order to determine the impact that pre-sentencing custody has on case processing.

Finally, the changes made by Bill C-25: *Truth in Sentencing Act* substantially changed the way that pre-sentencing custody credits are dealt with by the courts. It is anticipated that future research will investigate the state of pre-sentencing custody credits following those amendments, using the data from this study as a baseline for comparison.

The purpose of this study was to gain a better understanding of the use of pre-sentencing custody credits in Canada prior to the amendments made by Bill C-25. This research has provided not only information on the use of such credits, but has also shed light on other factors surrounding credits, such as the time spent in remand by persons convicted of various crimes. This study has also provided a good baseline that can be used as a comparison for future research in this area.

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